

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 02.12.2022

ORDER PRONOUNCED ON : 29.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

**W.P.(MD).No.2584 of 2016
and WMP(MD).No.2295 of 2016**

T.J.Subija

....Petitioner

Vs

1.The State of Tamil Nadu
Represented by the Home Secretary
Home Department
St.George Fort, Secretariat
Chennai 9

2.The Director General of Police
Office of the Director General of Police
Dr.Radhakrishnan Road
Mylapore, Chennai 4

3.The District Collector
Collectorate, Kanyakumari District

4.The Superintendent of Police
Office of the Superintendent of Police
Kanyakumari District

5.The Deputy Superintendent of Police
Office of the Deputy Superintendent of Police
District Crime Branch (DCB)
Nagercoil, Kanyakumari District

6.The Inspector of Police
Thiruvattar Police Station
Kanyakumari District
(Crime No.91 of 2010)

7.T.Rajkumar @ Kumaradass

8.S.Loyola Ignatius

9.Uma

10.Rajarethinam

...Respondents

(Notice to be served through the Respondent No.4
for the respondent Nos. 7 to 10)

Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the respondent No.1 to provide adequate compensation to a tune of Rs.1,00,00,000/- (One Crore Only) to the petitioner within time stipulated by this Court.

For Petitioner	: Mr.T.Lajapathi Roy
For R1 to R3	: Mr.Veera.Kathiravan Additional Advocate General Assisted by Mr.M.Lingadurai Special Government Pleader
For R4 to R6	: Mr.RM.Anbunithi Government Advocate (Crl.Side)
For R8	: Mr.M.Rajarajan
For R7, R9 & R10	: No appearance

ORDER

The present writ petition had been filed for a mandamus directing the first respondent to provide adequate compensation to a tune of Rs.1 crore to

the petitioner.

2. Contentions of the petitioner is as follows:

(i).The petitioner is a Yoga Teacher and she hails from a reputed family. In order to repair their old house, they have shifted their residence to a rental house belonging to the 7th respondent herein after executing a lease deed on 29.09.2009. However, the possession of the rental house was not handed over to the petitioner despite payment of Rs.25,000/- Due to the said dispute, the 7th respondent and his wife wanted to wreck vengeance and lodged a complaint before the 6th respondent Police alleging that the petitioner and her father have refused to vacate the house. Based upon the said complaint, the respondents 8 to 10 who are the Police Officials had entered into the house in the name of enquiry and instructed her to vacate the house immediately. The petitioner and her father informed them that if the landlord had returned the deposited amount and the jewels, they will vacate the premises. However on 16.02.2010, the 8th respondent who is the Police Constable had registered a case in Crime No.91 of 2010 under various provisions of Immoral Traffic Prevention Act 1956 on the basis of the complaint said to have been lodged by one Sasikumar and on 11.04.2010, the case was taken on file as C.C.No.10 of 2011 and a charge sheet was filed before the Judicial Magistrate, Padmanabhapuram. The petitioner was arrested by the 8th respondent in the said false case and detained at Women Home, Madurai for a period of 13 days

and thereafter, enlarged on bail. The said news of arrest under the Immoral Traffic Prevention Act 1956 was published in all the Newspapers and Media that the petitioner was involved in prostitution in the house and was arrested and detained by 13 days by the Police Personnel. It was published that they have seized the car of the petitioner and her properties. Due to the said publication of the news in various magazines and media, the name of the petitioner and her family suffered irreparable loss.

(ii).The petitioner had further contended that the 5th respondent namely the Deputy Superintendent of Police, District Crime Branch, Nagercoil, Kanyakumari District had conducted a detailed enquiry and gave a report on 29.04.2011 with a finding that the case was registered as against the petitioner under the Immoral Traffic (Prevention) Act 1956 is absolutely wrong and the case was foisted as against the petitioner due to personal tenancy disputes between the private respondents namely respondents 7 to 10. The petitioner recommended for withdrawal of the case foisted and also gave a finding that the petitioner may initiate criminal case as against the said persons who have defamed the petitioner. The petitioner had further contended that on 26.04.2012 one Sasikumar who is the defacto complainant in Crime No.91 of 2010 gave a statement under Section 164 of Cr.P.C before the Judicial Magistrate, Eraniel stating that he was involved in a traffic offence and he was taken to the Police Station and the Police Personnel got

his signature in a blank paper and he was not aware of the complaint. Therefore, the petitioner had filed CrI.OP(MD).No.2087 of 2011 before the High Court to quash the criminal complaint and the same was quashed in C.C.No.10 of 2011 in Crime No.91 of 2010 on 26.06.2015.

(iii).According to the petitioner, the enquiry report of the 5th respondent and the order of the High Court in CrI.OP(MD).No.2807 of 2011 dated 26.06.2015 will make it clear that the petitioner was not at all involved in any offence arising out of Immoral Traffic (Prevention) Act and a false case was foisted against her due to personal animosity. Therefore, the petitioner had sent a detailed representation on 08.10.2015 to the respondents 1 to 4 requesting them to provide compensation to a tune of about Rs.1 crore towards the disrepute suffered by her and her family in view of foisting of the false case and her arrest and detention in the rehabilitation home for a period of 13 days.

3.The respondents 1 and 2 have filed a counter contending that the Inspector of Police had abused the process of law which he was not authorized to do so. Therefore, the petitioner cannot seek compensation from the Government under vicarious liability as he was not in discharge of duty authorized by law. When the Government came to know about the un-authorized act of the Inspector of Police, it had appointed the Deputy Superintendent of Police, District Crime Branch, Nagercoil, Kanyakumari

District and during the subsequent enquiry, there was discovery of the fact that the petitioner has not committed the offence as alleged. Based upon the report of the Deputy Superintendent of Police, DCB, Nagercoil, the Inspector has submitted a petition before the Chief Judicial Magistrate, Nagercoil recording the statement of the defacto complainant under Section 164 Cr.P.C on 26.04.2012. After proper investigation, a charge sheet was filed on 11.04.2010 and it was taken on file as C.C.No.10 of 2011 on the file of the Judicial Magistrate Court, Padmanabhapuram. After nearly one year, the petitioner has presented a petition on 20.01.2011 complaining about the 7th respondent and in the said complaint, no particular allegation was made as against the respondents 6,8, 9 and 10.

4.In the counter, it has been further contended that the 8th respondent had received a complaint from the defacto complainant on 16.02.2010 and he has registered a case in Crime No.91 of 2010 and an intimation was also given to the Judicial Magistrate, Padmanabhapuram. However, on enquiry before the Deputy Superintendent of Police, District Crime Branch, Nagercoil, the defacto complainant has given a statement against the complainant. On the basis of the report of the Deputy Superintendent of Police, the Hon'ble High Court has quashed the case before trial. Therefore, only due to the enquiry conducted by the Deputy Superintendent of Police,

(District Crime Branch), Kanyakumari District, which the petitioner got only with the aid or assistance of the State, she was exonerated from the proceedings. Therefore, the petitioner cannot claim compensation from the State itself under pretext of vicarious liability. Even according to the petitioner, only in the enquiry conducted by the police authorities, she was found to be innocent.

5.The 6th respondent who is the Inspector of Police had filed a counter contending that on receipt of complaint from one Sasikumar relating to the cognizable offence, he had registered a case in Crime No.91 of 2010 under the provisions of Immoral Traffic (Prevention) Act, 1956 on 16.06.2010. After investigation, a charge sheet was also laid on 11.04.2010 and the case was taken on file in C.C.No.10 of 2011 on the file of the Judicial Magistrate, Padmanabhapuram.

6.In view of the report of the Deputy Superintendent of Police, (District Crime Branch), Nagercoil, the Hon'ble High Court was pleased to quash the proceedings in C.C.No.10 of 2011 in CrI.O.P(MD).No.2087 of 2011. Since the officials have performed their duty without any bias, the claim for compensation is not legally sustainable. The authorities have taken serious and adequate steps to conduct enquiry into the allegations raised by the petitioner. The Deputy Superintendent of Police, Nagercoil was appointed as enquiry officer and the enquiry report has been accepted and the Hon'ble

High Court has quashed the criminal proceedings. Therefore, there is no lapse on the part of the Police Officials so as to invoke the principles of vicarious liability and seek for compensation from the State.

7. The 8th respondent herein has filed a counter contending that he has no personal vengeance as against the petitioner in any manner and all the allegations against him in the affidavit are false and motivated one. He is not aware of any dispute between the petitioner and the 7th respondent namely the owner of the premises. He had further contended that when cognizable offences were made out, he is duty bound to register an F.I.R and conduct an investigation. No malafides or bias can be attributed against him. If at all the petitioner is aggrieved, she has to invoke the alternative remedy of approaching the civil Court by filing a defamation suit after obtaining prior sanction. The petitioner cannot take advantage of the order passed in CrI.O.P(MD).No.2087 of 2011 wherein the charge sheet has been quashed only based upon the enquiry report of the Deputy Superintendent of Police (District Crime Branch), Nagercoil.

Contentions on the side of the learned counsel appearing for the petitioner:

8. In view of the civil disputes between the 7th respondent and the petitioner and her family, a false case was foisted as against the petitioner under the Immoral Traffic(Prevention) Act, 1956. She was arrested and

remanded and sent to rehabilitation home where she was lodged for nearly 13 days. The arrest of the petitioner under the Immoral Traffic (Prevention) Act has been widely published in various Newspapers and Magazines during the relevant point of time along with the name of the petitioner. Ultimately, based upon the complaint lodged by the writ petitioner, an enquiry was conducted by the Deputy Superintendent of Police, District Crime Branch, Nagercoil who categorically found that only due to the personal animosity, a false case has been foisted as against the petitioner. He had also recommended for dropping of the case as against the petitioner. The Hon'ble High Court has accepted the said enquiry report of the Deputy Superintendent of Police, DCB, Nagerocil and has quashed the charge sheet filed by the police authorities. Therefore, it is clear that the petitioner has been wrongly implicated in a false criminal case which had affected not only the reputation but also privacy of the petitioner, in view of the wide publication given by the police authorities in various Newspapers and Magazines. The petitioner being an unmarried lady living with her parents, she has been wrongly implicated due to the rental dispute between her family and the police officer who was the landlord.

9.The learned counsel for the petitioner had relied upon the judgement of the Hon'ble Supreme Court reported *in (1997) 1 SCC 416 (D.K.Basu Vs. State of West Bengal)*, the judgements of our High Court reported *in (2010)*

8 MLJ 647 (Alarmelu Mangai Vs Secretary to the Government of Tamil Nadu), 2019 (1) CTC 385 (Kadek Dwi Ani Rasmini Vs. K.Natrajan, Inspector of Police) and the order made *in W.P.No.2227 of 2012 dated 01.02.022 (Nallakaman (deceased) and another Vs. The Government of Tamil and others)* to contend that where the police authorities have violated personal liberty and the reputation of the petitioner, the petitioner is entitled to receive compensation.

10.The learned counsel for the petitioner had further contended that the State is liable to pay compensation to the victim for the infringement of right of privacy and public humiliation meted out to her by the action of the police authorities in entering into the house at midnight and by implicating the petitioner in a false complaint and that too under the Immoral Traffic (Prevention) Act. He had further contended that whenever the breach of fundamental right is being established, the Court is empowered to grant compensation under the public law in addition to the private law for tortuous action under the criminal law. Hence, he prayed for allowing the writ petition for payment of compensation for violation of the fundamental rights and privacy of the writ petitioner.

Contentions of the learned Additional Advocate General appearing for the respondent:

11.The learned Additional Advocate General had contended that the

police have received information about the alleged offence on 16.02.2010 based upon the complaint made by one Sasikumar. The Police Authorities rushed to the spot and when they have searched the house, they found that the petitioner was along with her friend one Sathishkumar and found certain incriminating materials and an F.I.R was registered on the same day at about 7.00 p.m. A request for house search was submitted before the Judicial Magistrate, Padmanabhapuram and a consent letter was also obtained by the petitioner to co-operate for the search. A search mahazer was prepared at about 8.00 p.m on the same day. The petitioner was arrested at about 9.30 p.m on the same day. 5 packets of condom, an Alto-car, Rs.5000/- notes were seized from the said premises. The accused was sent to judicial custody after recording of statement by the witnesses on 17.02.2010. A charge sheet was laid on 11.04.2010 in C.C.No.10 of 2011. On 20.01.2011, the petitioner has given a complaint to the Superintendent of Police after one year from the date of occurrence alleging that a false criminal case has been lodged as against her. The Superintendent of Police has forwarded a complaint to the Deputy Superintendent of Police, District Crime Branch, Nagercoil to conduct an enquiry and he conducted the enquiry and examined some of the persons and filed a report on 29.04.2011. Even before the enquiry report was filed, the petitioner had filed CrI.OP(MD).No.2087 of 2011 on 17.02.2011. The Madurai Bench of Madras High Court had quashed C.C.No.10 of 2011 in

CrIOP(MD).No.2087 of 2011 as against the petitioner on 26.06.2015.

12.The co-accused namely Sathishkumar who was arrayed as Accused No.1 had filed CrI.OP(MD).No.139 of 2019 to quash the proceedings and the same was allowed by this Court on 12.06.2019.

13.According to the learned Additional Advocate General, the dates and events narrated above will clearly indicate that the police authorities have acted based upon a complaint lodged by the defacto complainant namely Sasikumar. After obtaining a search warrant from the concerned Judicial Magistrate, they have conducted a search in the premises of the petitioner and had recovered incriminating materials. After proper investigation, a charge sheet was also laid on 11.04.2010. 7 months after laying of charge sheet, the petitioner has made a complaint to the Superintendent of Police alleging foisting of false case. Therefore, it is clear that the petitioner had again approached the police authorities only with a complaint of foisting of police case without approaching the competent Court for quashing the charge sheet. Thereafter, an enquiry was conducted by the Deputy Superintendent of Police, DCB, Nagercoil who had submitted a report after examining a few persons connecting with the incident. The report was placed before this Court in the quash proceedings and thereafter, the charge sheet as against the petitioner was quashed on 26.05.2015.

14.The main allegation of the petitioner is that she was having some private quarrel with regard to the tenancy with the 7th respondent. However, no record has been placed before the Court to establish that the 7th respondent was responsible for initiation of the criminal proceedings. Once Sasikumar had lodged a complaint and when the complaint disclosed cognizable offence, the police authorities were duty bound to register a criminal case. After proper investigation, they have also filed a final report which was taken on file by a concerned Judicial Magistrate. Unless the petitioner is able to connect the 7th respondent with the initiation of the criminal proceedings, malafides cannot be attributed as against the police officials who registered the case, investigated the same and filed the charge sheet. The present registration of F.I.R and filing of the charge sheet are based upon the complaint lodged by one Sasikumar and therefore, the allegation of the petitioner that due to malafide intention this complaint has been lodged is not legally sustainable. The petitioner has not made out any case against the police officials that they had any malafide intention as against the petitioner. The petitioner has not even pleaded any malafide intention as against the police officials who have registered the case or investigated the crime or filed the charge sheet. The petitioner is attempting to link her personal dispute with the 7th respondent with the criminal proceedings without any iota of evidence in order to claim the sympathy of the Court and prayed for a compensation.

Merely because a criminal case was quashed, the police authorities cannot be considered to have registered a case and conducted the investigation with a malafide intention unless all the ingredients of malicious prosecution are proved. When the petitioner is not able to establish that with malafide intention they have acted, the State cannot be held vicariously liable. Therefore, he prayed for dismissal of the writ petition.

15.I have considered the submissions made on either side and perused the materials available on record.

16.It is not in dispute that the petitioner was arrested in Crime No.91 of 2010 for the offences under the various provisions of Immoral Traffic (Prevention) Act about 09.30 p.m on 16.02.2010. After investigation, a charge sheet has been laid on 11.04.2010 and it has been taken on file in C.C.No.10 of 2011 on the file of Judicial Magistrate, Padmanabhapuram. The said charge sheet was quashed by this Court in CrI.OP(MD).No.2087 of 2011 on 26.06.2015 based upon the enquiry report submitted by the Deputy Superintendent of Police, DCB, Nagercoil dated 29.04.2011. The above said facts are not in dispute.

17.The petitioner had sent a representation to the respondents 1 to 4 on 08.10.2015 seeking compensation for foisting of a false case and for violation of the privacy and lost her reputation in the society. The petitioner had also enclosed in the typed set certain newspaper reports in which the name of the

petitioner is reflected and it is alleged that she was arrested under the Immoral Traffic (Prevention) Act. From the records, it could be seen that a search was conducted in the house of the petitioner at about 8.00 p.m on 16.02.2010 and a search mahazer was also prepared. The remand report of the Judicial Magistrate indicates that the petitioner was remanded at about 09.30 p.m on 16.02.2010. The arrest memo indicates that the petitioner was arrested at 9.30 p.m on 16.02.2010 and the arrest was informed to her brother and she was remanded to the judicial custody on the same day. A charge sheet was filed on 11.04.2010 and after filing of charge sheet, the petitioner had lodged a complaint before the Superintendent of Police on 20.01.2011 alleging foisting of false case. A report was submitted by the Deputy Superintendent of Police on 29.04.2011 to the effect that a police case was lodged through the defacto complainant Sasikumar and he had recommended for withdrawal of the said case. The said enquiry of the Deputy Superintendent of Police, DCB, Nagercoil has been accepted by this Court and the charge sheet has been quashed.

18.The police authorities have not chosen to proceed further and therefore, it is clear that they have accepted the enquiry report.

19.In view of the above said facts, it is clear that a person who was involved in a traffic offence namely Sasikumar was called to the police station and he was directed to sign in some blank papers which was utilised

by the police officials as a complaint to register an F.I.R in Crime No.91 of 2010 under Immoral Traffic (Prevention) Act. The report also discloses that without proper enquiry, based upon some telephonic information, a traffic offender was used as a defacto complainant to register a case under the Immoral Traffic (Prevention) Act.

20.It is not in dispute that the name of the petitioner along with her involvement of the offence under the Immoral Traffic (Prevention) Act have been widely published in various newspapers and magazines. Later the police officials have ordered for re-enquiry on the complaint lodged by the writ petitioner which has resulted in discovery of the fact that the original complaint is a false one. The privacy and reputation of the writ petitioner have been sullied due to foisting of the false case and arrest of the petitioner at about 09.30 p.m on 16.02.2010 and the paper publication thereafter.

21.The State cannot take advantage of the fact that their own officials had conducted an enquiry and had found that the case to be a foisted one. When the State has accepted the report of the Deputy Superintendent of Police, District Crime Branch, Nagercoil, they should have initiated action as against the person who has filed the false case. However, the State has not proceeded in the said direction. The entire criminal case has been lodged based upon some telephonic information by anonymous person which was later converted into a complaint through a person who was brought to the

police station for a traffic offence. Therefore, the State cannot shirk their responsibility or its vicarious liability for the acts of its officials which have resulted in violation of the privacy and loss of reputation of an unmarried women.

22.The Hon'ble Supreme Court in a judgement reported *in (2017) 10 SCC Page 1 (K.S.Puttaswamy Vs. Union of India)* has held that right to privacy is a basic fundamental right and it forms an intrinsic part of Article 21 and freedoms guarantee in Pt.III in Constitution of India.

23.The learned Single Judge of our High Court in a judgement reported *in (2010) 8 MLJ 647 (Alarmelu Mangai Vs. Secretary to the Government of Tamil Nadu)* has held that the State is liable to pay compensation to the victim for infringement of right to privacy and public humiliation meted out to her by the action of the police authorities in entering into the house at midnight and forcibly taking away to the police station. The learned Single Judge was pleased to award Rs.5 lakhs as compensation.

24.In a judgement reported *in 2019 (1) CTC 385 (Kadek Dwi Ani Rasmini Vs. K.Natrajan, Inspector of Police)*, a learned Single Judge was pleased to award compensation for the infringement of personal liberty and reputation of a victim who was erroneously implicated under the provisions of Immoral Traffic (Prevention) Act 1956. In the present case, the writ petitioner has been falsely implicated under the provisions of Immoral

Traffic (Prevention) Act 1956 and she was arrested and remanded at 9.30 p.m. She was detained in a detention home for a period of 13 days. Later in an enquiry conducted by a higher police official, it was found that a false case has been lodged against her and based upon the report, this Court quashed the charge sheet.

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 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.

27.The writ petition is allowed to the extent as stated above. No costs. Consequently, connected miscellaneous petition is closed.

29.03.2023

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
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To

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State of Tamil Nadu
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Chennai 9

2.The Director General of Police
Office of the Director General of Police
Dr.Radhakrishnan Road
Mylapore, Chennai 4

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W.P(MD).No.2584 of 2016

R.VIJAYAKUMAR, J.

msa

Pre-delivery order made in
W.P.(MD).No.2584 of 2016
and WMP(MD).No.2295 of 2016

29.03.2023