



WP(MD)No.13599 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 16.05.2025

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

WP(MD)No.13599 of 2024

and

WMP(MD)Nos.11980 and 11982 of 2024

K.Gandhi

... Petitioner

Vs

1.The Superintendent of Police,
Pudukottai,
Pudukottai District.

2.The Inspector of Police,
District Crime Branch,
Pudukottai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus calling for the records of the 2nd respondent relating to the summons dated 05.02.2024 to quash the summons and consequential enquiry and directing the 2nd respondent not to harass the petitioner in the guise of conducting enquiry without resorting to due process of law.

For Petitioner : Mr.M.Karunanithi

For Respondents : Mr.E.Antony Sahara Prabahar

Additional Public Prosecutor



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ORDER

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This writ petition has been filed challenging the summon issued by the 2nd respondent to the petitioner to appear for an enquiry based on the complaint of one Martin Chellaiya.

2.The case of the petitioner is that the complaint given by one Martin Chellaiya to the Superintendent of Police, Pudukottai was forwarded to the Inspector of Police District Crime Branch, Pudukottai in C.No.861/2023/INS/DCB/2023. The 2nd respondent has conducted enquiry on several occasions. There is a civil dispute between the petitioner and the defacto complainant and a suit in OS.No.192 of 1993 is pending before the II Additional Sub Court, Tiruchirappalli. Since the civil dispute is pending for several long years, the de facto complainant has lodged a complaint by giving criminal colour to the civil dispute. Therefore, the petitioner obtained anticipatory bail from the District and Sessions Court, Pudukottai and it was directed to appear before the mediation centre. Though he had appeared for mediation, the defacto complainant had not turned up.



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3.The grievance of the petitioner is that the 2nd respondent is keeping the enquiry pending for several months and compelling the petitioner to settle the civil dispute with the defacto complainant. He has filed this writ petition on the grounds that no FIR has been registered and the 2nd respondent without jurisdiction has issued summon. The 2nd respondent in the guise of enquiry is harassing the petitioner against the circulars issued by the Police Department and as against the principles laid down by the Hon'ble Supreme Court time and again. The summon is nothing but an abuse of process of law.

4.The learned Additional Public Prosecutor appearing for the respondents submits that complaint of the defacto complainant was received by the Superintendent of Police and it was forwarded to the 2nd respondent Inspector of Police and the complaint has been treated as petition enquiry and the enquiry is pending.

5.This Court considered the rival submissions made and perused the materials placed on record.



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6. Perusal of the summon discloses that the summon has been issued without referring to the provision of law. The fact remains that the respondent police have not registered any case on the complaint forwarded by the Superintendent of Police, Pudukottai on 12.12.2023 and the complaint has been treated as petition enquiry for more than one year. The petitioner claims that there is a civil dispute between the petitioner and the defacto complainant and it is pending before the Court.

7. The 1st respondent received the complaint and it was forwarded to the 2nd respondent. The 2nd respondent has issued summons without even referring to the provisions of law, under which the summon is issued. The summons can be issued under Sections 91/160 CrPC. Issuance of summon under Section 91/160 CrPC arises only after the case is registered. Sections 91 and 160 CrPC read as follows:

“91. Summons to produce document or other thing.

(1) Whenever any Court or any officer-in-charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or



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officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2)Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3)Nothing in this section shall be deemed -

(a)to affect sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Banker's Books Evidence Act, 1891(13 of 1891); or

(b)to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegram authority.”

“160. Police officer's power to require attendance of witnesses.

(1)Any police officer making an investigation under this Chapter may, by order in writing require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted



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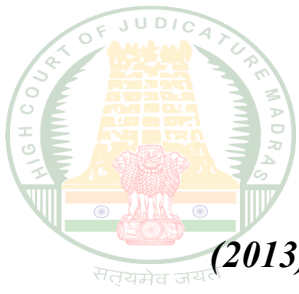
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with the facts and circumstances of the case; and such person shall attend as so required :

Provided that no male person [under the age of fifteen years or above the age of sixty-five years or a woman or a mentally or physically disabled person] [Substituted for the words "under the age of fifteen years or woman" by Criminal Law (Amendment) Act, 2013] shall be required to attend at any place other than the place in which such male person or woman resides.

(2)The State Government may, by rules made in this behalf, provide for the payment by the police officer of the reasonable expenses of every person, attending under sub-section (1) at any place other than his residence."

8.The fact remains that the complaint has been kept pending at the stage of petition enquiry for more than one year. The complaint is of the year 2023. In the existing code of Criminal Procedure at the relevant point of time there was no provision for conducting petition enquiry. However, the decision of the Full Bench of Hon'ble Supreme Court in ***Lalitha Kumari Vs State of Uttar Pradesh and others*** reported in



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(2013) 14 SCR 801, enables the Police to treat certain cases as petition enquiry such as matrimonial dispute, money dispute and civil dispute.

The Hon'ble Supreme Court while permitting the police officer to conduct petition enquiry, has also fixed time limit to conclude this preliminary enquiry within a period of six weeks. The fact remains that in this case the complaint has been treated as petition enquiry for more than one years.

9.PSO.No.562 of Police Standing Order prohibits the police from conducting any investigation of civil in nature, or in which the complaint is obviously endeavouring to set the criminal law in motion to support a civil right. The Director General of Police following the guidelines of the Hon'ble Supreme Court has issued circular restraining the police from entertaining the complaint of civil in nature in Circular No. 126303/Cr.I(1)/2008, dated 04.12.2008. This circular specifically prohibits the police officer that they should not entertain any enquiry and cause any investigation in cases of civil nature. A similar circular was also issued by the Director General of Police in Circular No. 18/ADGP/L&O/Camp/2024, dated 09.01.2024.



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10. Considering the dictum laid down by the Hon'ble Supreme Court in Lalitha Kumari Vs State of UP and the circulars issued by the Director General of Police in this regard, this Court in several cases held that the police shall not interfere in the civil disputes.

11. In view of the above discussion, this writ petition is allowed and the petitioner shall not be harassed. No costs.

16 .05.2025

DSK

To

1. The Superintendent of Police,
Pudukottai,
Pudukottai District.
2. The Inspector of Police,
District Crime Branch,
Pudukottai District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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B.PUGALENDHI, J.

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