

W.A.(MD)Nos.1155 of 2020, 1200 &1216 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.02.2025

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

AND

THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

W.A(MD)Nos.1155 of 2020, 1200 & 1216 of 2019

and

C.M.P(MD)Nos.6322, 10380 & 10467 of 2019

W.A(MD)No.1155 of 2020:

Deepa

... Appellant /
5th Respondent

Vs.

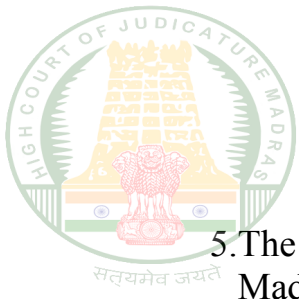
1.S.Vijayalakshmi

... 1st Respondent /
Writ Petitioner

2.The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore,
Chennai – 600 004.

3.South Zone Inspector General of Police,
Race Course Colony,
Reserve Line,
Madurai – 625 002.

4.The Commissioner of Police,
Madurai City,
Madurai – 625 002.



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5.The Deputy Commissioner of Police (L&O),
Madurai City,
Madurai – 625 002.

6.Krishnaveni

7.S.Anitha

... Respondents 2 to 7 /
Respondents 1 to 6

Prayer: Writ Appeal filed under Clause 15 of Letters Patent Act to set aside the order passed by this Court pertaining to the appellant in W.P(MD)No.5508 of 2019 dated 18.10.2019 by allowing this appeal.

For Appellant : Mr.S.Alagusundar

For Respondents : Mr.S.R.Anbarasu for R.1

Mr.A.Albert James
Government Advocate
for R.2 to R.5

W.A(MD)No.1200 of 2019:

Krishnaveni

... Appellant /
6th Respondent

Vs.

1.S.Vijayalakshmi

... 1st Respondent /
Writ Petitioner

2.The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore,
Chennai – 600 004.



W.A.(MD)Nos.1155 of 2020, 1200 &1216 of 2019

3.South Zone Inspector General of Police,
Race Course Colony,
Reserve Line,
Madurai – 625 002.

4.The Commissioner of Police,
Madurai City,
Madurai – 625 002.

5.The Deputy Commissioner of Police (L&O),
Madurai City,
Madurai – 625 002.

6.Deepa

7.S.Anitha

... Respondents 2 to 7 /
Respondents 1 to 5 & 7

Prayer: Writ Appeal filed under Clause 15 of Letters Patent Act to set aside the order passed by this Court pertaining to the appellant in W.P(MD)No.5508 of 2019 dated 18.10.2019 by allowing this appeal.

For Appellant : Mr.W.Pamelin

For Respondents : Mr.S.R.Anbarasu for R.1

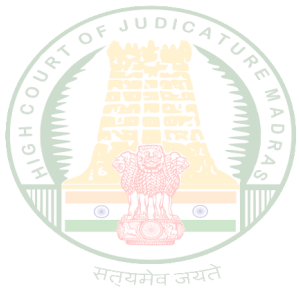
Mr.A.Albert James
Government Advocate
for R.2 to R.5

W.A(MD)No.1216 of 2019:

S.Anitha

... Appellant /
7th Respondent

Vs.



W.A.(MD)Nos.1155 of 2020, 1200 &1216 of 2019

WEB COPY 1.S.Vijayalakshmi

... 1st Respondent /
Petitioner

2.The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore,
Chennai – 600 004.

3.South Zone Inspector General of Police,
Race Course Colony,
Reserve Line,
Madurai – 625 002.

4.The Commissioner of Police,
Madurai City,
Madurai – 625 002.

5.The Deputy Commissioner of Police (L&O),
Madurai City,
Madurai – 625 002.

6.Deepa

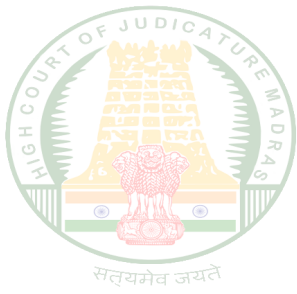
7.Krishnaveni

... Respondents 2 to 7 /
Respondents 1 to 6

Prayer: Writ Appeal filed under Clause 15 of Letters Patent Act to set aside the order passed by this Court pertaining to the appellant in W.P(MD)No.5508 of 2019 dated 18.10.2019 by allowing this appeal.

For Appellant : Mr.M.Subash Babu
Senior Counsel
for M/s.Subash Law Office

For Respondents : Mr.S.R.Anbarasu for R.1



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Mr.A.Albert James
Government Advocate
for R.2 to R.5

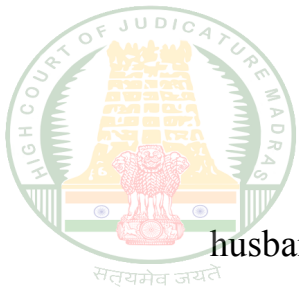
COMMON JUDGMENT

(Judgment of the Court was delivered by G.R.SWAMINATHAN, J.)

These Writ Appeals are directed against the order dated 18.10.2019 allowing W.P(MD)No.5508 of 2019 filed by the first respondent herein (S.Vijayalakshmi).

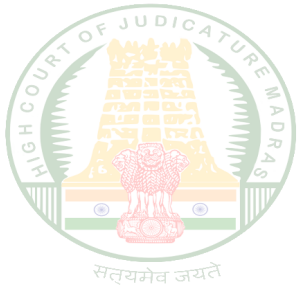
2.The averments set out in the affidavit filed in support of the writ petition can be summarized as follows:

The writ petitioner's husband / Saravanan is engaged in the business of selling tyres. His premises are located in D.No.31/1, Workshop Road, Madurai-1. His brother Madhu Pandian is also running a similar business on the opposite side. The relationship between the brothers came under strain. Madhu Pandian wanted to grab the petitioner's husband premises. He had obtained Saravanan's signatures by force in blank stamp papers on 22.07.2018 and fabricated a deed in his favour. Hence, Saravanan lodged complaint before C4, Thilagar Thidal Police Station. On 28.10.2018, when the petitioner went to her



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husband's shop, she was threatened by Madhu Pandian; he also videographed her. Hence the writ petitioner lodged complaint on 01.11.2018 leading to registration of Crime No.24 of 2018 on the file of AWPS(South), Madurai. Pursuant to the order in Cr.M.P.No.4660 of 2018 dated 14.11.2018 on the file of the learned Judicial Magistrate No. 2, Madurai obtained by the petitioner's husband, Crime No.950 of 2018 was registered against Madhu Pandian on 25.12.2018. The local Police wanted the petitioner and her husband to withdraw the aforesaid cases registered against Madhu Pandian. Since the petitioner as well as her husband refused, a false case in Crime No.20 of 2019 was registered against them at the instance of Madhu Pandian on 12.01.2019. On 14.01.2019, at about 08.00 p.m, the petitioner was arrested in front of her husband's shop premises. She was forcibly taken to the Police Station. She was abused and also beaten up. Injury was caused to her with knife. She was then taken to the hospital and remanded on the next day. The petitioner represented to the higher authorities about the high handedness of the local Police. Since no action was taken, she approached the High Court seeking departmental action against the erring Police personnel and also for payment of compensation.

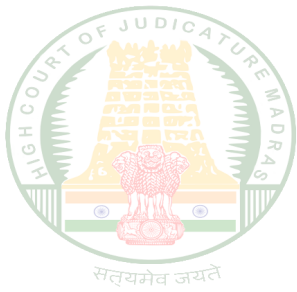


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3.The contesting respondents denied the version projected by the writ petitioner. However, the learned single Judge came to the conclusion that there has been a clear breach of the mandate contained in Section 46(4) of Cr.P.C which prohibited the arrest of women after sunset and before sunrise without the permission of the Judicial Magistrate. Terming the writ petitioner's arrest as illegal, the learned single Judge directed the disciplinary authority to initiate departmental action against the appellants herein. The department was directed to pay cost of Rs.50,000/- to the writ petitioner and recover the same from the salaries of the appellants.

4.Aggrieved by the said order, S.Anitha, Inspector of Police has filed W.A(MD)No.1216 of 2019. S.Deepa who was the Sub-Inspector of Police has filed W.A(MD)No.1155 of 2020. Krishna Veni, Woman Head Police Constable attached to C4, Thilagar Thidal Police has filed W.A(MD)No.1200 of 2019.

5.Heard both sides.



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6.Three issues arise for consideration:

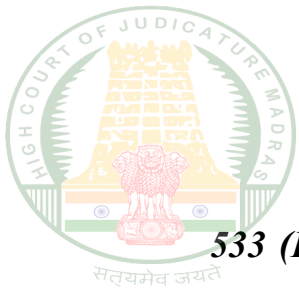
WEB COPY i) Whether the writ appeals are maintainable?

ii) Whether Section 46(4) of Cr.P.C (which corresponds to Section 43(5) of BNSS Act) is mandatory?

iii) Whether the appellants are entitled to relief?

7.The learned counsel appearing for the writ petitioner / first respondent herein submitted that since the learned single Judge had passed the impugned order by exercising his criminal jurisdiction, the present writ appeals filed under Clause 15 of Letters Patent would not lie. He relied on the decision reported in **2023 LiveLaw (Gau) 91 (Shri Deba Prasad Dutta Vs The State of Assam)**.

8.We overrule the said objection. Clause 15 of Letters Patent of the High Court of Judicature Madras is to the effect that an appeal shall not lie before the Division Bench from the judgment / order of the single Judge made in exercise of criminal jurisdiction. The expression “criminal jurisdiction” has been defined as one which exists for the punishment of crimes (P.Ramanatha Aiyar's Advanced Law Lexicon). The Hon'ble Supreme Court in the decision reported in **(2017) 5 SCC**



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533 (Ram Kishan Fauji Vs State of Haryana & Others) had held that

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the conception of criminal jurisdiction is not to be construed in a narrow sense. A criminal proceeding is ordinarily one which if carried to its conclusion may result in the imposition of sentences. For instance, if an order has been passed under Article 226 directing the Police to register an FIR if any cognizable offence is made out, writ appeal challenging such an order is not maintainable under Clause 15 (**KN Pudur Primary Agricultural Coop Credit Society Vs G.Balakrishnan (2018) 2 LW 111**).

9.The controversy may have its seed in a criminal proceeding. But genesis and origin cannot be the sole determinant. The nature of proceeding, the relief sought for and the consequences flowing from the order passed by the learned single Judge will answer the issue whether there was exercise of criminal jurisdiction or not. The writ petitioner did not seek bail on the ground that her arrest was illegal. On the other hand, she wanted the concerned police personnel to be departmentally dealt with. She sought compensation. These are matters which do not fall in the realm of criminal jurisdiction. The award of compensation in a proceeding under Article 226 of Constitution of India is a remedy available in public law (**Nilabati Behera Vs State of Orissa (1993) 2**



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SCC 746). We, therefore, hold that the above writ appeals are maintainable.

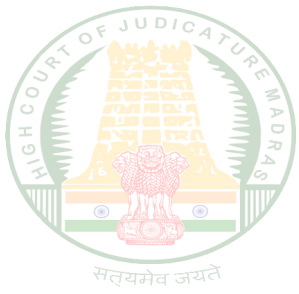
10.The writ petitioner was arrested on 14.01.2019 at about 20:00 hours. This is undoubtedly after sunset and before sunrise. The writ petitioner is a woman. No prior permission from the jurisdictional Magistrate was obtained before effecting arrest. No doubt, there has been a breach of the statutory mandate set out in Section 46(4) of Cr.P.C. But the question that calls for consideration is whether Section 46(4) of Cr.P.C is mandatory.

11.Section 46(4) of Cr.P.C is as follows:

“46. Arrest how made - ...

(4) Save in exceptional circumstances, no woman shall be arrested after sunset and before sunrise, and where such exceptional circumstances exist, the woman police officer shall, by making a written report, obtain the prior permission of the Judicial Magistrate of the first class within whose local jurisdiction the offence is committed or the arrest is to be made.”

Section 43(5) of BNSS Act, 2023 which corresponds to Section 46(4) of Cr.P.C is identically worded.



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12. Section 46(4) of Cr.P.C was considered by quite a few High Courts. We came across quite a few decisions wherein arrests made in breach of the procedure set out in Section 46(4) of Cr.P.C were declared illegal. Even compensation was awarded in some cases (*2021 SCC OnLine Bom 150 (Aleksander Kurganov Vs State of Maharashtra, 2018 SCC Online Bom 1095 (Kavitha Manikikar of Mumbai Vs Central Bureau of Investigation), 2016 SCC OnLine Gowhati 783 (Tanuja Roy Vs State of Assam)*). Even though we are conscious that Section 46(4) of Cr.P.C is a beneficial provision incorporated to ensure the safety of women, we are unable to hold that it is mandatory.

13. Section 46(4) of Cr.P.C was inserted by Act 25 of 2005 with effect from 23.06.2006. The 135th report of the Law Commission of India on Women in Custody (1989) recommended that ordinarily no women shall be arrested after sunset and before sunrise and in exceptional cases calling for arrest during these hours, prior permission of the immediate, superior officer shall be obtained or if the case was of extreme urgency, then after arrest report with reasons shall be made to the immediate superior officer and to the Magistrate. The 154th report of



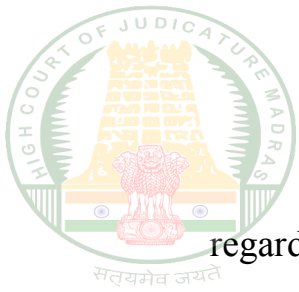
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the Law Commission of India suggested incorporation of the following

WEB COPY provision in Section 46 of Cr.P.C:

“Save in exceptional circumstances, no woman shall be arrested after sunset and before sunrise, and where such exceptional circumstances exist, the police officer shall, by making a written report, obtain the prior permission of the immediate Superior Officer for effecting such arrest, or if the case is one of extreme urgency and such prior permission cannot be obtained before making such arrest, he shall, after making the arrest, forthwith report the matter in writing to his immediate superior officer explaining the urgency and the reasons for not taking prior permission as aforesaid and also shall make a report to the Magistrate within whose local jurisdiction the arrest had been made.”

In Section 46(4) of Cr.P.C / 43(5) of BNSS, 2023 the expression “Shall” is found. It is well established that an enactment in form mandatory might in substance be directory and that the use of the word “shall” does not conclude the matter (***Hari Vishnu Kamath vs Ahmad Ishaque* (AIR 1955 SC 233)**). The construction of a statutory provision as directory or mandatory must depend on the legislative intent and context in which it was made and not upon the language in which the intent is clothed. The meaning and intention of the legislature are to be ascertained by having



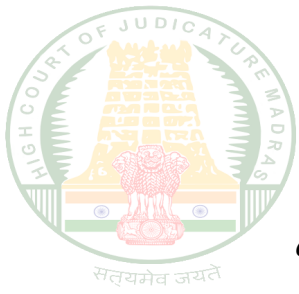
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regard to its nature, design and the consequences which would follow

from construing it in one way or the other (vide ***State of Mysore vs V.K. Kangan*** (AIR 1975 SC 2190)). Merely because a provision of law is couched in a negative language implying mandatory character, the same is not without exceptions. The Courts when called upon to interpret the nature of the provision, may, keeping in view the entire context in which the provision came to be enacted, hold the same to be directory (2005) 4 SCC 480 (***Kailash vs Nankhu***).

14.The Hon'ble Supreme Court in ***Sharif-ud-din Vs Abdul Gani Lone*** ((1980) 1 SCC 403) held as follows:

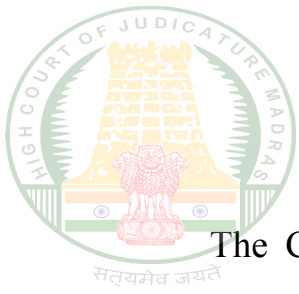
“9. The difference between a mandatory rule and a directory rule is that while the former must be strictly observed, in the case of the latter substantial compliance may be sufficient to achieve the object regarding which the rule is enacted. Certain broad propositions which can be deduced from several decisions of courts regarding the rules of construction that should be followed in determining whether a provision of law is directory or mandatory may be summarised thus: The fact that the statute uses the word “shall” while laying down a duty is not conclusive on the question whether it is a mandatory or directory provision. In order to find out the true character of the legislation, the



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court has to ascertain the object which the provision of law in question has to subserve and its design and the context in which it is enacted. If the object of a law is to be defeated by non-compliance with it, it has to be regarded as mandatory. But when a provision of law relates to the performance of any public duty and the invalidation of any act done in disregard of that provision causes serious prejudice to those for whose benefit it is enacted and at the same time who have no control over the performance of the duty, such provision should be treated as a directory one. Where, however, a provision of law prescribes that a certain act has to be done in a particular manner by a person in order to acquire a right and it is coupled with another provision which confers an immunity on another when such act is not done in that manner, the former has to be regarded as a mandatory one. A procedural rule ordinarily should not be construed as mandatory if the defect in the act done in pursuance of it can be cured by permitting appropriate rectification to be carried out at a subsequent stage unless by according such permission to rectify the error later on, another rule would be contravened. Whenever a statute prescribes that a particular act is to be done in a particular manner and also lays down that failure to comply with the said requirement leads to a specific consequence, it would be difficult to hold that the requirement is not mandatory and the specified consequence should not follow.”



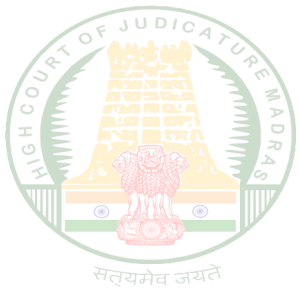
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The Constitution Bench of the Hon'ble Supreme Court in ***Dattatraya***

Moreshwar Vs The State of Bombay AIR 1952 SC 181) held that

generally speaking the provisions of a statute creating public duties are directory and those conferring private rights are imperative. When the provisions of a statute relate to the performance of a public duty, and the case is such that, to hold null and void acts done in neglect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote the main object of the legislature, it has been the practice of Courts to hold such provisions to be directory.

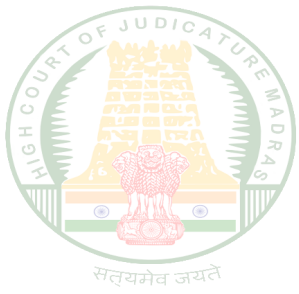
15. Section 46(4) of Cr.P.C has not spelt out the consequence of non-compliance with the requirement set out therein. If the provision was intended to be mandatory, the legislature would definitely have provided for the consequences of non-compliance. It cannot be denied that when a Police officer effects arrest pursuant to the power conferred on him by Cr.P.C, he is carrying out a public duty. The matter is not between the official effecting arrest and the arrestee. There is a third party involved, namely, victim / defacto complainant. The victim cannot be allowed to suffer for the neglect of duty by the Police officer.



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16. There are certain practical aspects to be borne in mind. Let us conceive of this situation: a woman commits murder after sunset and before sunrise; the information reaches the local Police Station; the accused is about to escape; in such a situation, should the officer concerned prepare a written report, send it to the local Magistrate, wait for His Honour's permission and upon receipt thereof, proceed to arrest the accused? We have no doubt in our minds that the horse would have bolted by then. Mechanical adherence to procedures can injure public interest at times. That is why, when the Nagpur Bench of the High Court of Bombay directed the State Government to issue instructions to all police officials that no female persons shall be detained or arrested without the presence of the lady constable and in no case after sunset and before sunrise, the Hon'ble Supreme Court in *State of Maharashtra Vs Christian Community Welfare Council of India (2003) SCC 8 546* observed that while they agreed with the object behind the direction, a strict compliance with the said direction in a given circumstance would cause practical difficulties to the investigating agency and even might give room for evading the process of law by unscrupulous accused.



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17.The statutory provision envisages that the woman police officer should make a written report and obtain the prior permission of the Magistrate before making arrest. One can very easily imagine situations when the investigating officer is left with very little time to respond. Suppose a heinous offence takes place at midnight. The jurisdictional Magistrate may not be available or accessible. Digital solutions may not also work. The Magistrate may be fast asleep. The written report sent by mail would be lying in his inbox. The accused will not be waiting for the Police officer to obtain permission from the Magistrate.

18.It was observed in ***D.Venkatasubramaniam Vs M.K.Mohan Krishnamachari reported in (2009) 10 SCC 488*** that it is the statutory obligation and duty of the Police to investigate into the crime and the Courts normally ought not to interfere and guide the investigating agency as to in what manner the investigation has to proceed. In ***Abhinandan Jha Vs Dinesh Mishra AIR 1968 117*** it was observed that the manner and method of conducting investigation are left entirely to the police and the Magistrate has no power to interfere with

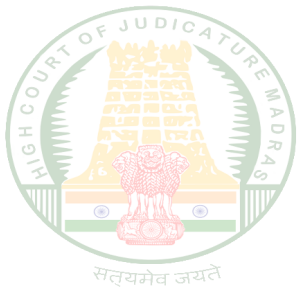


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the same. The Privy Council in *Nazir Ahamed case Lr 71 IA 273*

observed that the judiciary should not interfere with the police in matters which are within their province. The functions of the judiciary and the police are complementary and not overlapping. Investigation includes the discovery and arrest of the suspected offender. We are therefore of the view that it would not be in the interest of maintaining law and order if a Police officer is expected to write to the local Magistrate and effect arrest only after obtaining his/her prior permission. Such a stringent condition would disable Police officers from effectively discharging their public duties.

19.Though we have held that Section 46(4) of Cr.P.C / 43(5) of BNSS is directory and not mandatory, the provision cannot be rendered otiose by the Police. There is a laudable reason for incorporating such a provision. It is meant to serve as a note of caution to the officers effecting arrest of women. While failure to adhere to the statutory requirement may not lead to the arrest being declared illegal, the officer concerned may have to offer explanation for inability to comply with the procedure.



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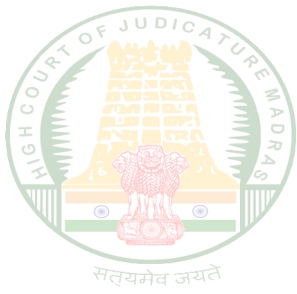
20.The statutory provision is in two parts. It forbids arrest of

women between sunset and sunrise except in exceptional situations.

Even in exceptional situations, the prior permission of the jurisdictional Magistrate must be obtained. Since the provision does not offer any clue as to what would constitute an exceptional situation, a learned Judge of Madras High Court vide order dated 16.03.2023 in ***W.P.No.29972 of 2015 (S.Salma Vs The State of Tamil Nadu & Others)*** directed the authorities to frame appropriate guidelines in this regard. Pursuant to the said direction, the Deputy General of Police had issued guidelines governing the arrest of women. They are as follows:

“6. In view of Section 46 of the Code and the law laid by the Hon'ble Apex Court and High Court, the following guidelines are issued for strict adherence by the Police:-

- i. No woman shall be arrested after sunset and before sunrise.
- ii. In exceptional circumstances only, arrest of a woman can be done after sunset and before sunrise with the following preconditions:
 - a. Such arrest shall only be carried out by a woman police officers; and
 - b. Prior permission from the Judicial Magistrate of the first class within whose local jurisdiction the offence is committed or the arrest is to be done shall be obtained.



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iii. Prior permission from the Judicial Magistrate of the first class may also be obtained electronically / digitally if situation warrants. Such records obtained electronically / digitally shall be preserved in a proper manner and such permission through electronic means shall be restored to only in unavoidable circumstances.

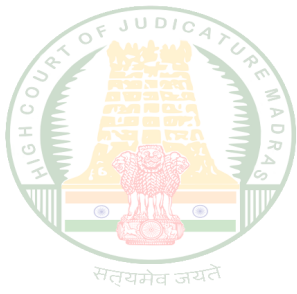
iv. When a woman is to be arrested, her submission to custody shall be taken on an oral intimation of arrest and unless the circumstances otherwise require, or unless the police officer is a female, the police officer shall not touch the accused woman for making her arrest – Section 46(1) of the Code.

v. The grounds of arrest shall be informed to the arrested woman – Section 50(1) of the Code.

vi. A woman shall be informed of her right to be released on bail after the arrest of a woman without a warrant for an offense other than a non-bailable one, and after arranging sureties on her behalf – Section 50(2) of the Code.

vii. Police Officer making an arrest has to immediately give the information regarding such arrest and the place where the arrested person is being held to any of him / her friends, relatives, or such other persons as may be disclosed or

viii. Only female police officer can search the arrested woman with strict regard to decency – Section



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51(2) of the Code.

ix. No male police officer can search the arrested woman.

However, he can search a arrested woman's house.

x. If the accused woman is brought for medical examination, her medical examination shall conducted only by, or under the supervision of, a female registered medical practitioner – Section 53(2) of the Code.

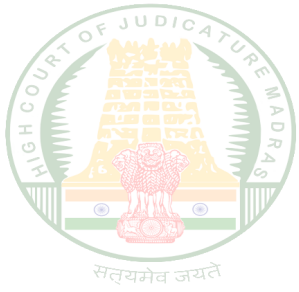
xi. When the arrested woman is brought for medical examination, her medical examination shall be conducted only by, or under the supervision of, a female medical officer and in case the female medical officer is not available, by a female registered medical practitioner – Section 54(1) of the Code.

xii. Arrested woman shall not be detained in custody for more than 24 hours without a special order of a Magistrate – Section 57 of the Code.

xiii. Arrested woman should be segregated from men and kept in All Woman Police Station.

xiv. Woman should be guarded by female constables / police officers. They must be questioned in the presence of police women.

xv. All necessary pre-natal and post-natal care should be provided to females who are arrested. Restraints should only be used on pregnant women a last resort. Their safety or the safety of their foetus should never be put at risk. Women must never be restrained during labour.



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7. The above guidelines and the judgments of the Hon'ble Apex court and the High Court referred to above shall be strictly adhered to by all the police officials. Any deviation will be viewed seriously and appropriate disciplinary action will be taken against the personnel if any deviation is found.”

We are afraid that the above guidelines merely reiterate the statutory language and the relevant portions of the order dated 16.03.2003 in ***W.P.No.29972 of 2015 (S.Salma Vs The State of Tamil Nadu & Others)***. They do not appear to shed clear light on the problem that may be faced by the arresting officers tasked with discharging public duty. We direct the Police Department to issue further guidelines clarifying as to what would constitute exceptional situations. Even the State legislature can consider bringing a local amendment to Section 43 of BNSS on the lines suggested by the Law Commission of India in its 154th report.

21.In the case on hand, admittedly, arrest was made by Deepa, Sub Inspector of Police. Krishnaveni, the Women Head Constable who carried out the arrest could not have disobeyed the order of her immediate superior. It would be too much to expect from a Head Constable to seek clarification from her superior if she had obtained prior



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permission from the jurisdictional Magistrate. Though illegal orders are

not meant to be obeyed, the illegality must be evident on the face of it. In

an Uniformed force, discipline is paramount. The conduct of Krishnaveni

must be viewed from this perspective. In fact, Krishnaveni had suffered

at the hands of the writ petitioner. She is said to have inflicted cut injury

on Krishnaveni with pen knife during the occurrence. Krishnaveni was

admitted in Hospital and as many as 10 stitches had to be put. Crime No.

26 of 2019 was registered against the writ petitioner and Krishnaveni

was the defacto complainant. It was later charge sheeted and taken

cognizance in C.C.No.558 of 2019 on the file of the learned Judicial

Magistrate No.2, Madurai. To quash the same, S.Vijayalakshmi filed

CrI.O.P(MD)No.16541 of 2019. This was taken up along with a number

of other petitions. The learned Judge who heard the quash petitions

suggested to the parties to give a quietus to the issue. Based on the stand

taken in the quash proceedings, C.C.No.558 of 2019 was quashed. We

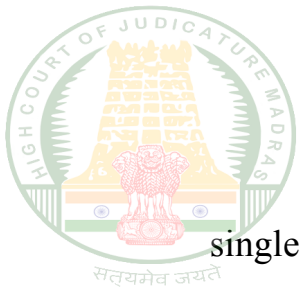
carefully went through the order dated 12.12.2024 quashing the criminal

proceedings. S.Vijayalakshmi did not get C.C.No.558 of 2019 quashed

on merits. S.Vijayalakshmi is therefore not justified in contesting the

writ appeal filed by Krishnaveni. In any event, since Krishnaveni only

carried out the order of her superior, we are of the view that the learned



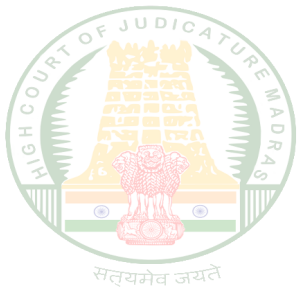
W.A.(MD)Nos.1155 of 2020, 1200 &1216 of 2019

single Judge was not justified in passing any adverse direction against

WEB COPY her.

22.Anitha, Inspector of Police was admittedly not on the spot.

We went through the remand report filed by Deepa. In her remand report, Deepa had nowhere stated that she arrested S.Vijayalakshmi on the oral instructions of Anitha. The learned counsel for the writ petitioner drew our attention to the RTI reply issued by the Department. To a question as to whether Deepa took any written consent from any superior officials, it was replied that oral intimation was given by the Inspector of Police and based on her instructions, action was taken. In our considered view, this reply under RTI cannot furnish the basis for coming to any adverse conclusion against Anitha. Admittedly, Anitha did not give the said reply. She had not made any admission. It is not known on what basis the RTI reply was given. Whether Anitha orally instructed or permitted Deepa to arrest the writ petitioner is a question of fact. Evidence is required to establish the same. In writ proceedings, which are summary in nature, adverse factual conclusions cannot be arrived at in the absence of definite and unimpeachable material.



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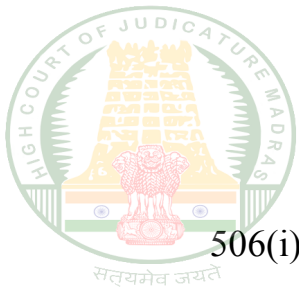
23.We are therefore of the view that the writ appeals filed by

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Anitha, Inspector of Police and Krishnaveni, Head Constable have to be allowed. The impugned order passed by the learned single Judge is set aside insofar as the aforesaid two appellants are concerned.

W.A(MD)Nos.1200 of 2019 and 1216 of 2019 are allowed.

24.We are however not inclined to allow the appeal filed by Deepa, Sub Inspector of Police who arrested the writ petitioner. This is for more than one reason. In her counter affidavit, she stated that she received what is known as “100 call” from the control room as well as from the Intelligence section; she rushed to the spot on 14.01.2019 at around 08.00 p.m; her intention was to let the petitioner go from the Police Station or give her station bail. But since S.Vijayalakshmi attacked Krishnaveni with pen knife, she had to be arrested. But the version set out in the remand report reads otherwise. In the remand report, Deepa had stated that she took up investigation in Crime No.20 of 2019 that was registered on 12.01.2019 and on receiving information about the whereabouts of Vijayalakshmi on 14.01.2019 at about 08.00 p.m, she went to the spot and arrested her. Crime No.20 of 2019 was registered only for the offences under Sections 448, 294(b), 323 and



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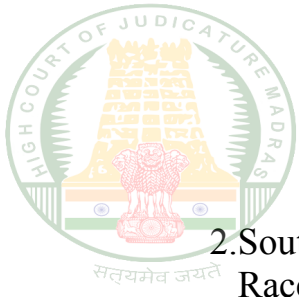
506(i) of IPC. They certainly did not warrant arrest. We could have accepted the case of Deepa if she had arrested the writ petitioner in Crime No.26 of 2019 which involved attack on Krishnaveni (Head Constable). That is not the case here. It is well settled that not only an applicant but also the respondent in a litigation must come to the Court with clean hands. We are of the view that Deepa had not made a fair disclosure of facts. The stand taken by Deepa before the learned single Judge was not in consonance with what was stated by her in her remand report dated 15.01.2019. For this reason, we decline relief to her. W.A(MD)No.1155 of 2020 stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

[G.R.S., J.] [M.J.R., J.]
07.02.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
MGA

To

1.The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore,
Chennai – 600 004.

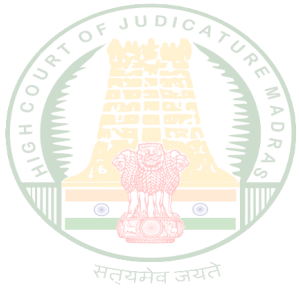


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2.South Zone Inspector General of Police,
Race Course Colony,
Reserve Line,
Madurai – 625 002.

3.The Commissioner of Police,
Madurai City,
Madurai – 625 002.

4.The Deputy Commissioner of Police (L&O),
Madurai City,
Madurai – 625 002.



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G.R.SWAMINATHAN,J.

AND

M.JOTHIRAMAN, J.

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W.A(MD)Nos.1155 of 2020, 1200 & 1216 of 2019
and
C.M.P(MD)Nos.6322, 10380 & 10467 of 2019

07.02.2025