



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Order Reserved on: 19.09.2023

Order Delivered on: 13.10.2023

CORAM

THE HONOURABLE Mr. JUSTICE P.DHANABAL

W.P.(MD).No.6540 of 2020
and W.M.P.(MD).No.17489 of 2023

Thavakannan

...Petitioner

Vs

- 1.The Secretary to Government,
Home Department-The Secretariat,
Fort St.George,
Chennai-600 009.
- 2.The Director General of Police,
Mylapore,
Chennai.
- 3.The Superintendent of Police,
Virudhunagar District,
Virudhunagar.
- 4.The Inspector of Police,
A.Mukkulam Police Station,
Virudhunagar District.
- 5.Manikandan-The Sub-Inspector of Police,
A.Mukkulam Police Station,
Virudhunagar District.
- 6.Periyasamy-Special Sub-Inspector of Police,
A.Mukkulam Police Station,
Virudhunagar District.



7.Thangapandian-Head Constable,
A.Mukkulam Police Station,
Virudhunagar District.

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8.Kamaraj-Head Constable,
A.Mukkulam Police Station,
Virudhunagar District.

9.Periyasamy-Head Constable
A.Mukkulam Police Station,
Virudhunagar District.

10.Muthuraman-Grade I Constable,
A.Mukkulam Police Station,
Virudhunagar District.

11.Saravanan-Grade I Constable,
A.Mukkulam Police Station,
Virudhunagar District.

12.Selvaraj-Grade I Constable,
A.Mukkulam Police Station,
Virudhunagar District.

13.Azhagamalai-Grade I Constable,
A.Mukkulam Police Station,
Virudhunagar District.

...Respondents

PRAYER: Writ Petition has been filed under article 226 Constitution of India praying to issue a writ of mandamus or any other order or direction in the nature of a Writ directing the respondents 2 to 3 to initiate departmental and/or disciplinary action against the respondents 5 to 13 independently on the basis of the representation given by the petitioner dated 23.03.2020.

For Petitioner : Mr.R.Karunanithi
For R1 to R4 : Mr.M.Sakthikumar
Government Advocate (Crl.Side)



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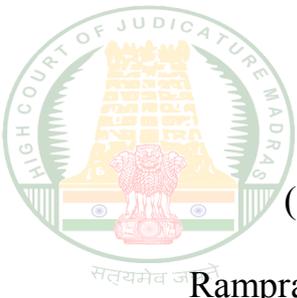


For R5 :Mr.M.Ajmal Khan
Senior Counsel
For R6, 9, 11 & 13 : No appearance
For R7, 8 & 12 :Vacated
R10 :Service awaited

ORDER

This Writ Petition has been filed to issue a Writ of Mandamus directing the respondents 2 to 3 to initiate departmental and/or disciplinary action against the respondents 5 to 13 independently on the basis of the representation given by the petitioner dated 23.03.2020.

2.According to the petitioner, he completed Diploma in Electronics and Electrical Engineering and has been waiting for employment. While so, he was informed that he would need a valid Passport for applying to certain companies. Thereby, he applied for Passport in the Passport Office. On 20.03.2020, he received a call from A.Mukkulam Police Station, to attend the verification process on 21.03.2020 at about 10.00 a.m., On the said date, he along with his relative one Sivasubramanian S/o.Karuppusamy went to A.Mukkulam Police Station. At that time, he was asked to wait for 30 minutes as concerned Sub-Inspector was not available. After some time, the Sub-Inspector arrived and his verification process was completed and thereafter, they proceeded to their village.



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(ii) On the same day i.e., 21.03.2023 at about 4.00 p.m., one Ramprasad, a prominent member of the society and Ex-President of the Co-operative Society had asked the petitioner to visit his farmhouse. When the petitioner visited the farmhouse, the said Ramprasad informed that while the 5th respondent had visited him in the farm house, it was alleged by him that his walkie-talkie was stolen by the petitioner. For that, the petitioner informed that he did not take the walkie-talkie.

(iii) Thereafter, the 5th respondent/Sub-Inspector of Police forced them to come to A.Mukkulam Police Station. The petitioner along with Ramprasad went to A.Mukkulam Police Station, where, the 5th respondent/Sub-Inspector of Police, abused, manhandled, and assaulted him in a black and blue manner. At that time, the respondents 5 to 13 who were present in the police station jointly used third degree methods.

(iv) Thereafter, the petitioner was handed over to Ramprasad and then, he was admitted in Virudhunagar Government Hospital. After the first aid treatment, he was referred to Madurai Government Hospital for further treatment. In the mean time, respondents 5 to 13 in order to escape from the clutches of law, registered a false case against the petitioner in Crime No.34 of 2020 for the offences under sections 294 (b), 353 and 427 of IPC.

(v) Subsequently, he made various representation before the respondents 1 to 3 to take necessary departmental action against the



respondents 5 to 13. On 23.03.2020 he made a representation but there was no action taken as against the respondents. The respondents 5 to 13 have violated the rules and fundamental right guaranteed under Article 21 of Constitution of India. Hence, the petitioner filed this Writ Petition to direct the respondents 2 and 3 to initiate departmental action as against the respondents 5 to 13 based on the representation dated 23.03.2020.

3. No counter was filed by the respondents.

4. The learned counsel appearing for the petitioner would contend that the petitioner had applied for Passport and for Passport verification, he along with his relative one Sivasubramanian went to A.Mukkulam Police Station on 21.03.2020. After verification, they returned home. Thereafter, one Ramprasad, a prominent member of the society and Ex-President of the Co-operative Society had asked the petitioner to visit his farmhouse. When the petitioner visited the farmhouse, the said Ramprasad informed that while the 5th respondent had visited him in the farm house, it was alleged by him that his walkie-talkie was stolen by the petitioner, for that, the petitioner replied that he did not see the walkie-talkie. In spite of that, the 5th respondent had compelled him to come to Police Station. Thereafter, he along with Ramprasad also went to A.Mukkulam Police Station, where, the respondents



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5 to 13 tortured the petitioner and manhandled and assaulted him in a black and blue manner and thereby, he sustained injuries. On the same day itself, he was admitted in the Hospital and had taken treatment. Subsequently, he gave a representation before the respondents 2 and 3, but they have not taken any steps, thereby, the petitioner filed this writ petition to take disciplinary action as against the erring officials.

5. The learned counsel for the petitioner to support his contention has relied the following judgments:

1.P.Rajakumari Vs.The Additional Director General of Police (Prisons) & Others reported in CDJ 2014 MHC 3992.

2. A.G.Subramaniam Vs.State of Tamilnadu unreported judgment in W.P.No.13488 of 2005.

6. The learned Government Advocate (Criminal Side) appearing for the respondents 1 to 4 would contend that on 21.03.2020, at about 18 hours, when the 5th respondent was on patrol duty near bus stop of police station, the petitioner uttered abusive words under intoxication and made quarrel with the public and the same was questioned by the 5th respondent. At that time, the petitioner damaged the walki-talki and thereby, FIR has been registered in Crime No.34 of 2020 for the offences under section 294(b), 427 and 353 of IPC. Further, the representation of the petitioner was already closed by the



respondents. The petitioner therefore cannot seek for a direction under Article 226 of Constitution of India for taking departmental action as against the officials to the 1st and 2nd respondent. Therefore, the Writ Petition is liable to be dismissed.

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7. Learned Senior counsel appearing for the 5th respondent would contend that the 5th respondent denied the contents of the affidavit of the petitioner. Infact, the petitioner only created law and order problem and thereby ,a case has been registered as against him. The disputed facts cannot be adjudicated through this Writ Petition and the petitioner cannot seek any remedy through Article 226 of Constitution of India for taking departmental action and the petition is liable to be dismissed. To support his contention, he relied the following judgements:-

1.Sudalaikkannu Vs.The Principal Secretary to Government unreported order in W.P.(MD).No.8871 of 2018.

2.S.Sukumaran Chettiyar Vs.State of Kerala unreported judgment in Crl.Rev.Petition No.1356 of 2005.

8. This Court heard both sides and perused the materials available on record.

9. According to the petitioner, he applied for passport and for



verification of passport, he went to A.Mukkulam Police Station on 21.03.2020 and after verification, he returned back to his house. Thereafter, one Ramprasad, a prominent member of the society and Ex-President of the Co-operative Society had asked the petitioner to visit his farmhouse. When the petitioner visited the farmhouse, the said Ramprasad informed that while the 5th respondent had visited him in the farm house, it was alleged by him that his walkie-talkie was stolen by the petitioner and then, the 5th respondent had compelled the petitioner to come to A.Mukkulam Police Station and he also went there, the 5th respondent asked about the missing walki-talkie. The petitioner replied that he don't know anything about the walkie-talkie. Thereafter, all the police personnel, who were present in the police station, have assaulted the petitioner in a black and blue manner. Thereafter, he sent a representation dated 23.03.2020 and the same was not considered. Hence, the petitioner filed this Writ Petition seeking to take departmental action against the police officials.

10. According to the 5th respondent, on the date of occurrence, nothing happened as alleged by the petitioner. Infact the petitioner in a drunken mood made a quarrel with the public and thereby, the 5th respondent questioned about his acts. At that time, the petitioner damaged the walki-talkie and thereby, the FIR has been registered in Crime No.34 of 2020 for the offences



under sections 294(b), 427 and 353 of IPC. In order to escape from the above said criminal case, the present petition has been filed by the petitioner.

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Further the petitioner cannot seek remedy through Article 226 of Constitution of India. As a matter of right, the petitioner cannot seek remedy under Article 226 of Constitution of India for a direction to take disciplinary action as against the respondents, since disciplinary action is between the employer and employee.

11. A careful reading of the judgments relied on by the learned counsel for the petitioner in (i) P.Rajakumari Vs. The Additional Director General of Police, is concerned, it relates to the custodial violence and in that case, compensation was awarded; per contra, the present case is with regard to taking of disciplinary action. The judgment in A.G.Subramaniam Vs.State of Tamilnadu, is concerned, the Single judge of this Court has ordered for compensation and also to take disciplinary proceedings as against the erring officials.

12. As far as the judgments relied on by the learned counsel for the 2nd respondent is concerned, the legal position laid down in S.Sukumaran Chettiyar Vs.State of Kerala, will not be applicable to the present facts of the case as the said case was relating to the compensation awarded under section



250 of Cr.P.C. In the case on hand, it is relating to custodial violence and the relief sought for is compensation under Article 226 of Constitution of India.

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The judgment in Sudalaikkannu Vs.The Principal Secretary to Government, is concerned, this Court after referring the Supreme Court Judgement in Rajnit Prasad Vs. Union of India and others reported in (2000) 9 SCC 313 and also referring the Division Bench of this Court in Sudalaikkannu Vs. The Secretary, Municipal Administration and Water Supply Department and others in W.P.(MD).No.6734 of 2007 held that if the petitioner filed any advisory writ petition on the service side, the same is maintainable. However, the petitioner herein is a 3rd party and cannot maintain the Writ petition invoking under Article 226 of Constitution of India, on the service side, seeking a writ of mandamus is to take action against the employee or officials.

13. Therefore, in view of the above said judgment, it is clear that the petitioner herein, being a 3rd party, cannot seek direction under Article 226 of Constitution of India to take disciplinary action against the respondents 5 to 13. But at the same time, the allegations levelled against the officials are serious in nature and thereby, this Court is of the opinion that it is appropriate to issue directions. Accordingly, the 3rd respondent is directed to conduct enquiry in this regard and if any violation of rules, then he can act according to law and the 3rd respondent has to submit an action taken report to this



Court within a period of three months from the date of receipt of a copy of this order.

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14. With the above said direction, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

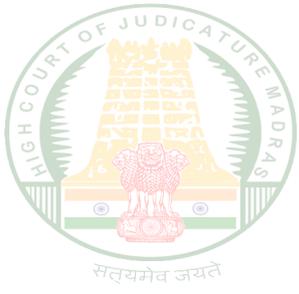
13.10.2023

mpa
Index : Yes/No
Speaking order/non-speaking order



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WEB COPY

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Pre-Delivery order in
W.P.(MD).No.6540 of 2020
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