

Contempt Petition (MD) No. 416 of 2011 and M.P.(MD) No. 1 of 2011

Nirmala v. Asra Karg

2013 SCC OnLine Mad 2201

(BEFORE N. PAUL VASANTHAKUMAR AND P. DEVADASS, JJ.)

Nirmala ..... Petitioner

v.

1. Asra Karg, The Superintendent of Police, Office of the Superintendent of Police, Madurai District.
2. Rajendran, The Superintendent of Prison, Central Prison, Madurai.
3. Ramesh, The Inspector of Police, Nagamalai Pudukottai Police Station, Madurai District.
4. Nallu, The Inspector of Police, Koodakovil Police Station, Madurai District ..... Respondents  
For Petitioner ... Mr. R. Alagumani  
For Respondents ... Mr. M. Govindan, Spl.G.P.

Contempt Petition (MD) No. 416 of 2011

And

M.P.(MD) No. 1 of 2011

Decided on July 29, 2013

: ORDER

(Order of the Court was made by P. DEVADASS, J.)

On 24.07.2013, in this Contempt Petition, this Court passed the following order: -

"This contempt action has been initiated by Nirmala, wife of Muthupandi, who is confined in the Central Prison, Madurai, for having taken her husband handcuffed in blatant violation of Hon'ble Apex Court's commandments/directions.

2. On 26.4.2011, in connection with Cr. No. 70 of 2011, Muthupandi was taken by an Escort Police team of Armed Reserve Police Force of Madurai District to the Court of Judicial Magistrate, No. IV, Madurai.

3. After getting the remand warrant from the Court, it is alleged that without the permission of the learned Magistrate, the Escort Police personnel have handcuffed Muthupandi and took him in public so fettered to the Central Prison, Madurai.

4. As directed, the first respondent, namely, Mr. Asrakarg, then Superintendent of Police, Madurai District, now, Superintendent of Police, Dharmapuri District and respondents 3 and 4 were present.

5. First respondent detailed before us the various steps taken by the Police department to impart the importance of human rights, the several directions of the Hon'ble Apex Court and this Court regarding prohibition as to handcuffing, chaining of prisoners without prior permission of the Court, both in Tamil and in English, as part of

their training programmes, to the members of the Tamil Nadu Police. We are aware that such kind of training is being given to Superior Police Officers also. Thus, attempt has been made to sensitize the members of the Police Force on various facets of human rights.

6. In the counter, the following police personnel, who constituted the Escort Team, which had handcuffed Muthupandi on the said date has been furnished:

Sl. No. Name Grade & No. Present Station

1. V. Selvam AR. HC.-2456 S.S. Colony Police Station

2. K. Alagarpandi Gr.I.PC.-613 S.S. Colony Police Station

3. V. Ramakrishnan Gr.I.PC.-1162 Koodakovil Police Station

4. J. Gunasekar P.C.-311 Palamedu Police Station

7. As directed, all the said four police personnel were also present.

8. During our enquiry, each one of them admitted that they have handcuffed Muthupandi. They also admit that they did not obtain prior permission from the learned Magistrate to do so.

9. In *CITIZEN FOR DEMOCRACY v. STATE OF ASSAM* [AIR 1996 SC 2193], the Hon'ble Apex Court declared as under:

"16. We declare, direct and lay down a rule that handcuffs or other fetters shall not be forced on a prisoner-convicted or under-trial while lodged in a jail anywhere in the country or while transporting or in transit from one jail to another or from jail to Court and back. The police and the jail authorities, on their own, shall have no authority to direct the handcuffing of any inmate of a jail in the country or during transport from one jail to another or from jail to Court and back.

17. Where the police or the jail authorities have well grounded basis for drawing a strong inference that a particular prisoner is likely to jump jail or break out of the custody then the said prisoner be produced before the Magistrate concerned and a prayer for permission to handcuff the prisoner be made before the said Magistrate. Save in rare cases of concrete proof regarding proneness of the prisoner to violence, his tendency to escape, he being so dangerous/desperate and the finding that no other practical way of forbidding escape is available, the Magistrate may grant permission to handcuff the prisoner.

18. In all the cases where a person arrested by police, is produced before the Magistrate and remand-judicial or non-judicial is given by the Magistrate the person concerned shall not be handcuffed unless special orders in that respect are obtained from the Magistrate at the time of the grant of the remand.

19. When the police arrests a person in execution of a warrant of arrest obtained from a Magistrate, the person arrested shall not be handcuffed unless the police has also obtained orders from the Magistrate for the handcuffing of the person to be so arrested.

20. Where a person is arrested by the police without warrant the police officer concerned may if he is satisfied, on the basis of the guidelines given by us in para

above, that it is necessary to handcuff such a person, he may do so till the time he is taken to the police station and thereafter his production before the Magistrate. Further use of fetters thereafter can only be under the orders of the Magistrate as already indicated by us.

21. We direct all ranks of police and the prison authorities to meticulously obey the above-mentioned directions. Any violation of any of the directions issued by us by any rank of police in the country or member of the jail establishment shall be summarily punishable under the Contempt of Courts Act apart from other penal consequences under law. The writ petition is allowed in the above terms. No costs."

10. We are of the firm view that the said police personnel have acted in blatant violation of the Hon'ble Apex Court's directions.

11. Merely because a person has been accused of having committed a crime, became an under trial or a convict or a detainee, he does not ceases to be a human being. Article 21, Constitution of India guarantees him life and liberty. None shall be subjected to inhumane treatment is the spirit of the said Article of the Constitution of India.

12. Policemen are the Law enforcing arm of the State. They are not above the law. They are bound to obey the law as laid down by Hon'ble Apex Court and this Court.

13. On our enquiry, each one of them sought for mercy that they are married, has grown up children and are sole-bread winner of their families. They also regret for what they have done.

14. The mighty and majesty of law is not lies with its power to punish. It lies with its magnanimity.

15. 'Just as a past behind a Saint, a Sinner too has a future'. The said four police personnel may turn a new leaf in their career and life.

16. The quality of justice is tempered with mercy. But, there shall not be misplaced sympathy.

17. These four police personnel alone are not the wrong doers. There are many more of them. Very few of them are caught. This kind of violation of Human Rights is going on in day in and day out in many parts of this State. They must be told of their violation. But, at the same time, it should not mar their career nor affect their families. They can also be given opportunity to reform themselves.

18. Mr. Alagumani, the learned counsel for the petitioner submitted that they are not particular about punishing them but, particular about vindication of Human Rights and respect for human values. The learned counsel added that instead of punishing them and spoiling their career, compensation may be awarded to the petitioner.

19. Earlier, in *POOVAYI v. STATE OF TAMIL NADU* [2012 (3) MLJ (CRL) 38, exactly under similar circumstances, when certain police personnel have handcuffed an under trial without prior permission of the Magistrate, this Court directed them to pay Rs. 5,000/- each as compensation to the wife of the under trial prisoner. Further, this court also directed the Police Department not to initiate departmental action against them and also not to include this in their Service Records.

20. The four police personnel involved in the present case have now volunteered to

pay Rs. 10,000/- each as compensation.

21. They have violated a facet of fundamental right guaranteed to the petitioner's husband. The factors pertaining to them and their plea of mercy are considered.

22. Each of the said four police personnel is ordered to pay Rs. 10,000/- (Rupees ten thousand only) on 29.7.2013 to the petitioner. This amount shall be treated as compensation amount. The Police Department shall not initiate any disciplinary action as against them. Also this shall not be entered in their service records.

Post on 29.07.2013."

2. As per our order dated 24.07.2013 (supra), the four police personnel, namely, V. Selvam, K. Alagarpandi v. Ramakrishnan and J. Gunasekar are present today. The petitioner, namely, Nirmala and her counsel are also present.

3. In compliance of our order dated 24.07.2013, each of the police personnel paid Rs. 10,000/- to the petitioner. They also tendered their unconditional apology. They also assured that, they will not harass the petitioner and her husband. Their submissions are recorded.

4. We are very sad to note that in spite of the directions of the Hon'ble Supreme Court in *PREM SHANKAR v. DELHI ADMN* [AIR 1980 SC 1535]; and in *CITIZEN FOR DEMOCRACY v. STATE OF ASSAM* [AIR 1996 SC 2193], our order in *POOVAYI v. STATE OF TAMIL NADU* [2012 (3) MLJ (CRL) 38] and the various circulars issued and training conducted by the Tamil Nadu Police Department, this sort of violation of human rights and degradation of human beings are perpetrated. So much efforts taken on "Human Rights Education" did not give the desired result.

5. Because of the earnest efforts taken by some of the human rights activists and the counsel for the petitioner, this human right violation has been brought to our notice.

6. The Superior Police Officers must oversee that the police personnel are not violating this basic human right. They must deal with the violators appropriately. We direct that copies of this order shall be sent to the Principal Secretary to the Government, Home Department, the Director-General of Police and the Additional Director General of Prisons, who will reiterate the Hon'ble Apex Court's directions, their earlier circulars and our directions already issued in *POOVAYI*'s case (supra) as well as in the present case and sent them to all the members of the Police force and also to the Director-General of Police in charge of Training, Tamil Nadu Police Academy and to the Principals of Police Recruitment Schools. This itself is not an end. It is a beginning of an end.

7. In *CITIZEN FOR DEMOCRACY* (supra) the Hon'ble Apex Court directed the implementation of the law declared by it relating to prohibition as to handcuffing of under trials, convicted persons and persons in incarceration. The obligation to implement them has been imposed on the Police Officials also.

8. These violations can be immediately brought to the notice of the Magistrates, who are directly dealing with these matters. Moreover, the Magistrates and the Judicial Officers are bound to take cognizance of violations if any of the said orders of the Hon'ble Apex Court [see Article 141, Constitution of India].

9. With the above observations, the contempt petition is closed. Consequently, the connected Miscellaneous petition is closed.

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