

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.03.2023

Pronounced on: 16.03.2023

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

WP.No.29972 of 2015

S.Salma

... Petitioner

Vs

- 1.The State of Tamil Nadu
Rep. by its Chief Secretary
Fort St. George,
Chennai-600 009.
- 2.The Director General of Police
Dr.Radhakrishnan Salai
Mylapore
Chennai-600 004.
- 3.The Commissioner of Police
Coimbatore City
Coimbatore.
- 4.The Inspector of Police
B15, Rathinapuri Police Station
Coimbatore.

... Respondents



PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents to pay a compensation of Rs.25,00,000/- to the petitioner and further direct the respondents 1 to 3 to take disciplinary action against the concerned officers in a timely manner.

For Petitioner : Ms.Shri Varshini V.
For Mr.Abrar Md. Abdullah

For Respondents: Mr.P.Kumaresan, Additional Advocate General
Assisted by Mr.Alagu Gowtham
Government Advocate

ORDER

The petitioner is a journalist. She is aggrieved by her arrest by the 4th respondent, the Inspector of Police, B-15 Rathinapuri Police Station, on 25.09.2012 for offences under Section 75(1)(c) of the Tamil Nadu City Police Act, 1988, and Sections 506(1) and 505(1)(b) of the Indian Penal Code in Crime No.379 of 2012 based on the complaint of M.G.J.Ramkumar (in short 'complainant').

2. The complainant is a member of the All India Anna Dravida Munnetra Kazhagam (AIADMK). He had claimed to have received a pamphlet from the petitioner that contained defamatory observations about the then Chief Minister of Tamil Nadu. He alleged that the petitioner was distributing the



same among the public, right outside the AIADMK Head office at Sivanandha Colony, Coimbatore.

3. The complainant further alleged that when he questioned her about the propriety of her actions, the petitioner threatened him with dire consequences and continued indulging in the distribution. She was arrested on 25.09.2012 at around 10.00 p.m. Though she claims that the 4th respondent had physically touched her shoulder when he arrested her, that allegation is not pursued in the hearing before me.

4. The petitioner was, admittedly, produced before Judicial Magistrate No.2, Coimbatore at 1.00 a.m. and remanded to judicial custody in the Central prison. She was incarcerated for two days and released on bail thereafter.

5. The respondents point out that in the remand order dated 26.09.2012, there is a specific noting by Judicial Magistrate No.II, Coimbatore that there were no complaints that were raised as against the police and they would thus urge that all the grievances expressed in the Writ Petition are only an afterthought. A charge sheet was filed on 07.10.2014 in C.C.No.809 of 2014 and judgment was passed in the Criminal case on 02.03.2019 acquitting the petitioner of all the charges alleged.

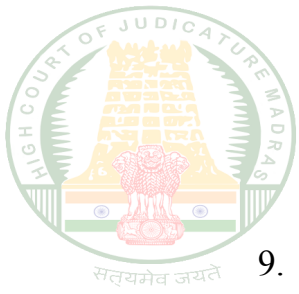
6. In this Writ Petition, the petitioner has sought a mandamus directing the respondents to compensate her by paying a sum of Rs.25.00 lakhs. She further



seeks a direction to R1 to R3, being the State, the Director General of Police/DGP/R2 and the Commissioner of Police/CP/R3 to initiate disciplinary action against the concerned officers in a timely manner.

7. The second limb of the prayer is premised upon the position that her arrest is illegal and in this regard, petitioner relies on Section 46(4) of the Criminal Procedure Code, 1973 (in short 'Cr.P.C.'). The provisions of Section 46 deal with the procedure to be followed in making an arrest. Section 46 places an absolute bar on the arrest of women before sunrise and after sunset, except under exceptional circumstances. Where such exceptional circumstances exist or arise, the arrest shall be carried out, by a woman police officer, or in the presence of a woman police officer, and only after making a written report and obtaining prior permission of a Judicial Magistrate of first class within whose local jurisdiction the offence is committed or the arrest is to be made.

8. The first allegation of the petitioner is that there was no woman police officer present. This is found to be factually incorrect insofar as the respondents have, in their counter, specifically referred to the assistance provided by Grade I police constable (woman) 1512 Shanthi Priya, who had accompanied Parthiban, Inspector of Police, Investigating Officer, B15 Rathinapuri Police Station for the entirety of the arrest and thereafter. The petitioner does not very seriously pursue this argument after the aforesaid details have been produced.

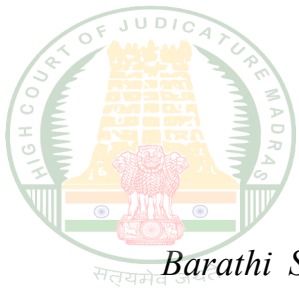


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9. The second argument is premised on the police passport provided. It contains the time of exit of the two police officers as 23:45 on 25.09.2012. No doubt, there is some overwriting in the time and date, but again, there is no serious objection that is raised to either the date or the time when the petitioner was taken the residence of, and produced before the Judicial Magistrate.

10. There is a tentative attempt of the petitioner to throw some doubt on the time marked, which is 11:45 pm, purporting to state that her arrest was at around 10'o clock. However, in my view, the sequence of events has been explained by the respondents satisfactorily as, according to the respondents, the petitioner was, indeed, arrested at 10'o clock and brought into the police station. After the necessary procedures, she was taken to the residence of the Judicial Magistrate and produced before her and it is this exit that has been recorded in the police passport. Thus, no infirmity is found as far as this document is concerned and the sequence of events as revealed in the police passport, also do not lead to any adverse inference.

11. The third argument relates to the necessity for obtaining prior permission from the Judicial Magistrate concerned. This has, admittedly, not been done in the present case. The petitioner relies in this regard, on the decisions of the Division Bench of the Bombay High Court in the case of i) *Kavitha Manikikar of Mumbai V. Central Bureau of Investigation* (2018 SCC Online Bom 1095) and (ii)



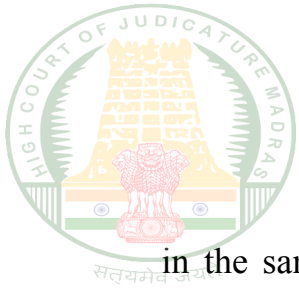
Barathi S.Khandhar V. Maruti Govind Jadhav and others (2012 SCC Online

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Bom 1901).

12. The above decisions emphasize the mandatory nature of Section 46(4) of the Cr.P.C. In both, the Bombay High Court has referred to the judgment of the Hon'ble Supreme Court in the case of *D.K.Basu V. State of West Bengal* ((2006) 4 SCC 1) and an earlier decision of the Division Bench of the Nagpur Bench of the Bombay High Court in *Christian Community Welfare Council of India V. Government of Maharashtra* (1995 Cri.L.J. 4223).

13. Per contra, Mr.Kumaresan, learned Additional Advocate General appearing for the respondents would interpret Section 46(4) to state that while compliance with all conditions thereunder is, indeed, mandatory, in exceptional circumstances, an immediate arrest is permitted, though in the presence of a woman police officer. The requirement for submission of written report for obtaining prior permission of the Judicial Magistrate can be a post-arrest event, as, practically such procedures would delay the arrest, creating avenues for law and order disturbance and danger to the public.

14. In the present case, the petitioner was distributing unsigned pamphlets implicating the then Hon'ble Chief Minister of Tamil Nadu in the context of load shedding and power cuts. The allegation levelled is that a crowd of persons were

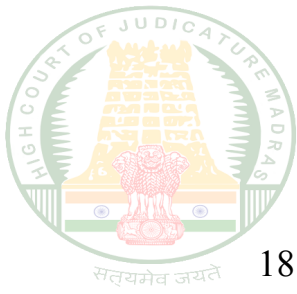


in the same vicinity and were being drawn into a heated discussion. There was thus an imminent threat of public danger and safety.

15. The distribution of the pamphlets was in front of the AIADMK Mandram to the party cadres as well. It was in such circumstances and since the police did not have any other option, that the petitioner had been arrested in the presence of a woman police officer. The entire, and swift action, was solely in the interests of averting a law and order issue.

16. Mr.Kumaresan relies on a judgment of the Hon'ble Supreme Court in the case of *State of Maharashtra V. Christian Community Welfare Council of India* (AIR 2004 SC 7), especially paragraph 9 which supports his submission that in cases necessitating swift action it may not be possible and practical to have a presence of a lady constable for arrest. The decision of the learned single Judge directing the State Government to issue directions that no female should be detained or arrested without the presence of a lady constable prior to sunrise and after sunset were read down to this extent.

17. The respondents have also cited a decision of the Bombay High Court in *Shabana Begum V. Union of India and another* (Criminal Bail Application No.1096 of 2020 dated 10.03.2021). That applicant had been arrested in connection with various offences punishable under the Narcotics Drugs and Psychotropic Substances Act, 1985 (in short 'NDPS Act').

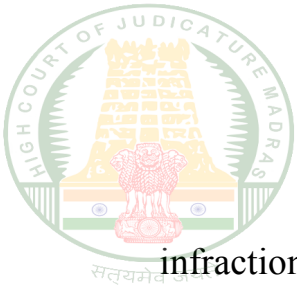


18. One of her defences was that her arrest was in contravention of Section 50(4) of the NDPS Act, which stipulates that no female shall be searched by anyone excepting a female. Various other defences were also raised to the effect that her arrest and detention was illegal.

19. After taking note of the facts in that case, the Court rejected the submissions of the applicant holding that her detention in custody was legal. The Court referred to the judgment of the Hon'ble Supreme Court in the case of *State of Punjab V. Baldev Singh* (Appeal (crl.) 396 of 1990 dated 21.07.1999) to the effect that whether or not the safeguards provided under Section 50 have been duly observed, would have to be determined by the Court on the basis of evidence led during trial.

20. Thus, and in conclusion, the Bombay High Court held that there was no merit in the contention of the applicant that she was entitled for bail for alleged non-compliance of Section 50, as, such non-compliance would have to be established in trial.

21. This case does not advance the stand of the respondents, as it turns on an entirely different factual and legal premise. That apart, in this case, non-compliance with the second limb of Section 46(4) of the Cr.P.C. is an admitted



infracton. Thus, in my considered view, the respondents hardly needed to have pressed into service this case.

22. Both the petitioner and the respondents have cited a decision of a learned single Judge of this Court in the case of *S. Vijayalakshmi V. Director General of Police and others* (2019 SCC online Madras 24482), where also, reference has been made to the decision of the Bombay High Court in the case of *Kavitha Manikikar of Mumbai* (supra).

23. I have heard the detailed submissions of the parties and devoted my anxious consideration to the cases cited.

24. The pamphlet is anonymous, and a copy of the same has been produced before me reading thus:

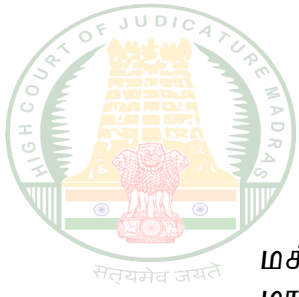
மின் தடங்கள்

தமிழ்நாட்டில் கோவை மாவட்டத்தில் மணிக்கு ஒரு முறை மின்வெட்டு ஏற்படுத்தி தொழிலாளர்களின் வயிற்றில் அடிக்கும் தமிழக முதல்வர் ஜெயலலிதா

தன் சாவுக்கு மின்சாரம் பற்றாக்குறை ஏற்படும் என்று இப்போதே சிக்கனம் ஏற்படுத்துகின்றாரா?

கோவை மாவட்டத்தில் சிறு தொழில்கள் முடங்கும் அபாயத்தில் உள்ளது வருமானம் குறைவு ஆனால் மின்கட்டணம் அதிகம்

சிறுதொழிற்சாலைகளுக்கு போதிய மின்சாரம் வழங்காமல் தடங்கள் செய்வது ஜெயலலிதா!



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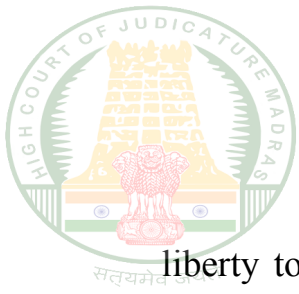
மக்களை வாழ வைக்க வந்த அரசா? இல்லை கோவை
மாவட்டத்தின் முதுகெலும்பாக உள்ள சிறுதொழிற்சாலைகளின்
அழிவுக்கு வந்த அரசா!

இதற்க்கு யார் பதில் கூறுவது?

25. Learned counsel for the petitioner would state that no pamphlet has been produced by the respondent thus far and this is correct, as also borne out by the order passed in the criminal case. However, a copy has been produced along with the records of the case by the respondent now, and shown to the learned counsel as well. The contents are the same as mentioned in various documents including the counters filed by R2 and R4 as well as the order of the Criminal Court.

26. The sum and substance of the pamphlet is that power outages have crippled small scale industries that are the backbone of Coimbatore District. The blame is placed at the doors of the then Hon'ble Chief Minister and it was this observation that had irked the party cadres. It is entirely possible that the contents thereof would agitate members of the public, particularly when the recipients are the cadres of the party concerned, all the more when the distribution was in the vicinity of the AIADMK Mandram itself.

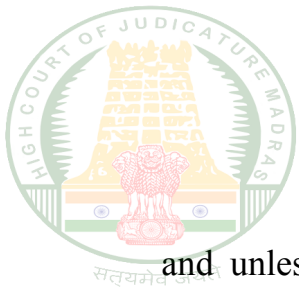
27. The selection of the location is evidently conscious and intended to create an impact. If at all it is the case of the petitioner that the contents of the pamphlet vary from the allegations of the respondents, she was entirely at



liberty to have stated so at any point between 2012 and today. This has not been done. Hence, I see no reason to disbelieve the pamphlet produced before me as part of the records and proceed on that premise.

28. Separate counters have been filed by R2 and R4, on his and on behalf of other respondents as well. The averments therein reveal the following. The pamphlets have been circulated in front of the AIADMK Mandram to the public as well as to the party cadres at 9.00 p.m. Members of the public and the cadre had gathered there. Though in the affidavit filed by the petitioner, she states that a case was registered on the basis of the complaint of one M.G.J.Ramkumar, in the counter filed by R2, the complainant is named as one M.A.Jain. In the course of investigation, the then Inspector of Police who was at the site of incident saw the petitioner in the same spot at 22:45 hours.

29. These facts find place in both the counters. No rejoinder has been filed by the petitioner. I am thus of the view that there is nothing untoward in the decision of the authorities that there were exceptional circumstances warranting the arrest. After all, the exceptionality or otherwise of circumstances would have to be seen in the context of the events of 25.09.2012. The existence of circumstance necessitating action must be left to be determined by the authorities



and unless extreme perversity is made out or the facts indicate otherwise, one would not interfere with such a decision.

30. As regards the charges laid against the petitioner, the same had ultimately been quashed by Judicial Magistrate Court No.II, Coimbatore by order dated 02.03.2019, one of the charges, granting the benefit of doubt. The provisions of Section 75(1)(c) of the TNCP Act reads thus:

75. Penalty for drunkenness or riotous or indecent behavior in public place

(1) Whoever, in any public place, office, station house or Court, or in any place of public amusement or on board of any passenger boat or vessel, is –

(a).....

(b)....

(c) found behaving in a violent or boisterous or disorderly or riotous or indecent manner or using any threatening, abusive or insulting words which causes or is likely to cause a breach of public peace shall be liable, on conviction, to imprisonment not exceeding six months or fine not exceeding one thousand rupees.

31. The crimes alleged are in terms of Section 505 (1)(b) and 506(ii) of the IPC that read thus:

505. Statements conducing to public mischief.—(1)
Whoever makes, publishes or circulates any statement, rumour or report,—

(a).....

(b) with intent to cause, or which is likely to cause, fear or alarm to the public, or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquility; or

(c)



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506. Punishment for criminal intimidation.—.....

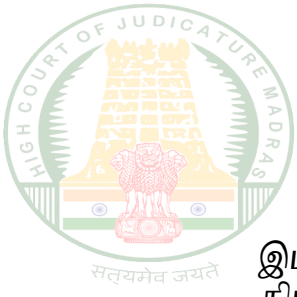
If threat be to cause death or grievous hurt, etc.—and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or 8 [imprisonment for life], or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

32. The operative portion of the order of the learned Magistrate reads thus:

9. இந்த வழக்கில் மேற்படி எதிரியின் மீது சுமத்தப்பட்ட 75(1)(c) TNCP Act, மற்றும் 505(1)(b), 506(ii) இ.த.ச.வின் கீழ் பதிவு செய்யப்பட்ட குற்றச்சாட்டு அரசு தரப்பால் சந்தேகத்திற்கிடமின்றி நிரூபிக்கப்பட்டுள்ளதா என்பதே தீர்மானிக்கப்பட வேண்டிய விசயமாகும்.

10. இவ்வழக்கில் மேற்படி எதிரியின் மீதான குற்றச்சாட்டை நிரூபிக்கும் வகையில் அரசுத்தரப்பில் அ.சா.1 முதல் அ.சா.7 வரையிலான சாட்சிகள் விசாரிக்கப்பட்டு, அ.சா.ஆ1 முதல் அ.சா.ஆ6 வரையிலான சான்றாவணங்கள் குறியீடு செய்யப்பட்டுள்ளன.

11. அ.சா.1 தனது சாட்சியத்தில் கடந்த 25.09.2012 அன்று இரவு 9 மணியளவில் தானும் கண்ணன் என்பவரும் சிவானந்தா காலனியில் உள்ள அதிமுக மன்றம் முன்பாக நின்று பேசிக்கொண்டிருந்தபோது எதிரி அங்கு வந்து தமிழக முதல்வரைப்பற்றி அவதூறாக பிரச்சாரம் செய்து வந்ததாகவும், தன் சாவுக்கு மின்சாரப்பற்றாக்குறை ஏற்படும் என்றும், இப்போதே மின்சாரம் சிக்கனம் செய்யப்படுகிறதா என்ற வாசகம் அடங்கிய துண்டு சீட்டை வினியோகம் செய்ததாகவும், தான் அவரை ஏன் இவ்வாறு செய்கிறாய் என கேட்டதாகவும் அதற்கு தன்னை தகாத வார்த்தைகளால் திட்டியதாகவும், மீண்டும் அவர் என்னிடம் ஆட்கள் நிறைய பேர் இருக்கிறார்கள், அவர்களை வைத்து உன்னை கொலை செய்துவிடுவேன் என்று மிரட்டியதாகவும், தான் உடனே காவல் நிலையம் சென்று அ.சா.ஆ1 புகார் கொடுத்ததாகவும் சாட்சியம் அளித்துள்ளார். ஆனால் எதிரி கொடுத்ததாக சொல்லப்படும் துண்டுப்பிரசாரம் அரசுத்தரப்பில் குறியீடு செய்யப்படவில்லை. மேலும் சம்பவம் நடந்ததாக சொல்லப்படும்

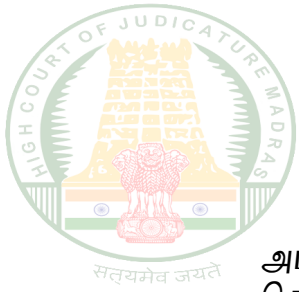


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இடத்தில் பொது மக்கள் யாரும் இருந்ததாகவோ, எதிரி திட்டியதால் தனக்கு அவமானம் ஏற்பட்டதாகவோ சாட்சியம் அளிக்கவில்லை. அ.சா.2 எதிரி அ.சா.1ஐ கெட்ட வார்த்தையால் திட்டியதாகவும் சாட்சியம் அளிக்கவில்லை. மேலும் அ.சா.1 முதல் அ.சா.5 வரையிலான சாட்சிகள் அனைவரும் ஒரே கட்சியை சேர்ந்தவர்கள் ஆவார்கள். பொதுமக்கள் யாரும் இவ்வழக்கில் சாட்சியாக விசாரிக்கப்படவில்லை. எனவே எதிரியின் மீதான 75(1)(c) TNCP Act-ன் கீழான குற்றச்சாட்டு அரசுத்தரப்பில் சந்தேகத்திற்கு அப்பாற்பட்டு நிரூபிக்கப்படவில்லை என்று தீர்மானிக்கப்படுகிறது.

12. மேலும் எதிரி அ.சா.1-ஐ பார்த்து கொலை மிரட்டல் விடுத்தது குறித்து அ.சா.1 தனது சாட்சியத்தில் எதிரி தன்னிடம் நிறைய ஆட்கள் இருக்கிறார்கள் என்றும் அவர்களை வைத்து உன்னை கொலை செய்து விடுவேன் என்று மிரட்டியதாக சாட்சியம் அளித்துள்ளார். ஆனால் எதிரி அவ்வாறு மிரட்டியதால் தனக்கு உயிர் பயம் ஏற்பட்டது என்பது குறித்து எந்த சாட்சியமும் அளிக்கவில்லை. சம்பவத்தை நேரில் பார்த்ததாக சொல்லப்படும் அ.சா.2 எதிரி உன்னை என்ன செய்கிறேன் பார் என்று மிரட்டியதாக சாட்சியம் அளித்துள்ளார். அ.சா.3 கொலை மிரட்டல் விடுத்ததாக எதுவும் சாட்சியம் அளிக்கவில்லை. அ.சா.4 கொலை மிரட்டல் விடுத்ததால் அ.சா.1க்கு உயிர் பயம் ஏற்பட்டதாக சாட்சியம் அளிக்கவில்லை. மேலும் இரவு 9.00 மணிக்கு சம்பவம் நடந்ததாக சொல்லப்படும் நிலையில் ஒரு பெண் 4, 5 ஆண்கள் இருக்கும் இடத்தில் வந்து அவர்களை கொலை மிரட்டல் விடுத்து தகாத வார்த்தைகளால் திட்டினார் என்பது இந்த நீதிமன்றத்தால் ஏற்க முடியவில்லை. எனவே எதிரியின் மீதான இ.த.ச.பிரிவு 506(ii)-ன் கீழான குற்றச்சாட்டு அரசுத்தரப்பால் சந்தேகத்திற்கு அப்பாற்பட்டு நிரூபிக்கப்படவில்லை என்று தீர்மானிக்கப்படுகிறது.

13. அரசுத்தரப்பின் பிரதான வழக்கானது எதிரி தமிழக முதல்வருக்கு எதிராக அவதூறாக பிரச்சாரம் செய்து வந்ததாகவும், ஒரு துண்டு பிரசாரம் விநியோகித்தார் என்பதே ஆகும். ஆனால் அந்த துண்டு பிரசாரத்தை அ.சா.1 போலீசாரிடம் கொடுத்ததாக சாட்சியம் அளிக்கவில்லை. மேலும் அந்த துண்டு பிரசாரம் இந்த வழக்கில் அரசுத்தரப்பில் குறியீடும் செய்யப்படவில்லை. எனவே எதிரியின் மீதான குற்றச்சாட்டுக்கு அடிப்படை ஆதாரம் எதுவும் இல்லை என முடிவு செய்து எதிரியின் மீதான இ.த.ச. பிரிவு 505(1)(b)-ன் கீழான குற்றச்சாட்டு அரசுத்தரப்பில் சந்தேகத்திற்கு



அப்பாற்பட்டு நிரூபிக்கப்படவில்லை என்று முடிவு செய்யப்படுகிறது.

14. இறுதியாக, எதிரியின் மீதான இ.த.ச.பிரிவுகள் 75(1)(c) TNCP Act, மற்றும் 505(1)(b), 506(ii) இ.த.ச.கீழான குற்றச்சாட்டானது அரசுத் தரப்பில் சந்தேகத்திற்கு இடமின்றி நிரூபிக்கப்படவில்லை என்று தீர்மானித்து சந்தேகத்தின் பலனை எதிரிக்கு சாதகமாக்கி எதிரி குற்றவாளி இல்லை என்று கு.வி.மு.ச.பிரிவு 248(1)-ன் கீழ் எதிரியை விடுதலை செய்து தீர்ப்பளிக்கப்படுகிறது.

33. Ultimately the petitioner has been acquitted of the charges made against her under Sections 505(1)(b) and 06 of the IPC and 75(1)(c) of the TNCP Act. However, the prayer of the petitioner has to be tested on the anvil of Section 45(4) of Cr.P.C. and, in my considered view, the impact of events subsequent to the incidents of 25.09.2012, such as media reports of the incidents and the acquittal itself, would be limited.

34. I am concerned with whether the arrest that was made was lawful and in compliance with the mandate of Section 46(4) of Cr.P.C. Section 46 deals with 'Arrest how made'. Sub-section (4) reads thus:

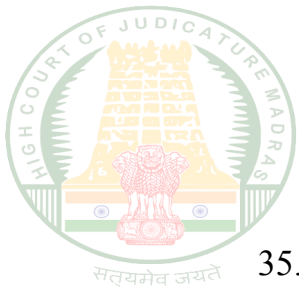
46. Arrest how made -

(1)

(2).....

(3)

(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.*



35. Thus,

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(i) there is an absolute bar generally as against the arrest of a woman prior to sunrise and after sunset on any given day. Legislature has noted the possibility of exceptional circumstances and has carved out an exception in such situations.

(ii) In the presence of exceptional circumstances, a woman may be arrested prior to sunrise and after sunset, a) in the presence of a woman police officer and b) after submission of a written report to the jurisdictional Judicial Magistrate of first class, who has to permit the same.

36. In the present case, there has been a police officer Ms. Shanthi Priya in attendance at all times during the arrest. Thus condition (a) stands complied. No written report was made to the jurisdictional Judicial Magistrate and no prior permission obtained and the defence of the respondents is that the existence of exceptional circumstances would preclude the necessity for compliance with this condition. This defence does not align with the statutory mandate. The recognition accorded to 'exceptional circumstances' only carves out an exception to the absolute bar subject to satisfaction of conditions.

37. The conditions are two-fold: (i) necessitating the presence of a woman police officer and (ii) obtaining prior permission from a Judicial Magistrate by submission of written report. There is no elbow room provided in this regard and on a plain and simple reading of Section 46(4), it was incumbent upon the



authorities to have submitted a written report to the Judicial Magistrate concerned and obtained prior permission for the arrest of the petitioner.

38. The respondents would maintain that such a strict interpretation of Section 46(4) would make the practical enforcing of law and order very difficult as the authorities would be hard pressed to do the needful quickly enough to prevent any untoward incident.

39. This situation has been taken note of by the Hon'ble Supreme Court in the case of *Christian Community Welfare Council of India* (supra) that had travelled to the Hon'ble Supreme Court from a decision of the Nagpur Bench of the Bombay High Court on the criminal side. That judgment was rendered on 15.10.2003 prior to the insertion of sub-section (4) to Section 46 of Cr.P.C. by Act 25 of 2005, with effect from 23.06.2006. The facts, briefly put, are that one Junious Adam Illamatti was found dead in police custody on 23.06.1993. It was alleged that when his wife Jarina Adam went to the police station, she was also taken into custody and molested and a criminal case was registered against 10 police officers in that regard. The officers were charge sheeted and after undergoing trial, they were acquitted of the charge of murder, but convicted under other provisions and punished accordingly.

40. A Criminal Writ Petition was filed by the Christian Community Welfare Council of India, where Jarina Adam was also impleaded. The prayer was for an



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inquiry into the custodial death and compensation to his wife. Various directions were issued in the matter to prevent and check custodial violence. Such directions included the procedure for arresting of persons, particularly females. One of the directions was that the State Government should issue instructions immediately in unequivocal and unambiguous terms to all concerned that no female person shall be detained or arrested without the presence of a lady constable and in no case after sunset and before sunrise.

41. The challenge before the Hon'ble Supreme Court included the aforesaid direction as well and at paragraph 9, while the Bench agreed with the spirit and object behind this direction, they felt that strict implementation of the directions may not be practical and hence watered it down to align with practical consideration and emergent situations.

42. While the observations of the Hon'ble Supreme Court have taken note of the ground reality, legislature has been far more restrictive in the construction of Section 46(4) of the Cr.P.C. Evidently, this construction bears note of the possibilities for abuse of discretion, if provided, in such a situation, by the police authorities.

43. Decision making in such events becomes very subjective and sometimes, questionable, and it is, perhaps, to avoid this that the provisions of Section 46(4) are absolute, the balance tipping in favour of the woman. While I



commend the wisdom of such a decision, the question that arises is as regards the impact of the procedural infraction on the prayer for compensation before me.

44. I have in paragraph Nos. 28 and 29 discussed the events of 25.09.2012 coming to the conclusion that the decision of the authorities to arrest was not shown to be perverse. The relief sought for by the petitioner is a discretionary one, in exercising which, this Court will be guided by not just the explicit language of Section 46(4), but the spirit, object, purpose as well as practical considerations of implementing the same.

45. I am of the considered view that the prayer for compensation, in light of the respondents having established the existence of exceptional circumstances for arrest, has to be denied. I leave the legal question on the impact of the procedural irregularity on an arrest of a woman open, to be determined in a more appropriate matter.

46. As a foot note, I believe that it would be, in the fitness of things, for the authorities to apply their mind to this question and frame appropriate guidelines to ensure compliance with the mandates under Section 46(4) even in exceptional, urgent and emergent situations.

47. After all, in today's times of advanced technology, permission/sanction can well be obtained electronically/digitally in an



instantaneous manner, ensuring that proper electronic trail and record of such sanction, is obtained and preserved.

48. Let suitable guidelines be issued in this regard. This writ petition is disposed declining the request for mandamus. Guidelines, as directed above, be framed and placed before the Court within a period of eight (8) weeks from date of receipt of a copy of this order. No costs.

16.03.2023

Sl

Index : Yes / No

Speaking Order/Non-speaking order

Neutral citation: Yes/No

To

- 1.The State of Tamil Nadu
Rep. by its Chief Secretary
Fort St. George,
Chennai-600 009.
- 2.The Director General of Police
Dr.Radhakrishnan Salai
Mylapore
Chennai-600 004.
- 3.The Commissioner of Police
Coimbatore City
Coimbatore.
- 4.The Inspector of Police
B15, Rathinapuri Police Station
Coimbatore.



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W.P.No.29972 of 2015

DR.ANITA SUMANTH, J.

SI

WP.No.29972 of 2015

16.03.2023