

Y. Krishnappa Vs. the State

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Court : Chennai

Decided On : Feb-24-1992

Reported in : 1993CriLJ3646

Judge : T.S. Arunachalam, J.

Appeal No. : Criminal Misc. Petn. No. 15045 of 1989

Appellant : Y. Krishnappa

Respondent : The State

Advocate for Def. : B. Sriramulu, Public Prosecutor

Advocate for Pet/Ap. : K. Selvarangan, Adv.

Judgement :

ORDER

1. This petition unfurls a tale of woe of a person shown as an accused in a crime, not being able to get through the process of trial for over six years, in spite of his having approached this Court thrice, inclusive of this petition, due to the lack of promptitude or even routine action by the investigating police, notwithstanding the fact that the law enforcing agency had been sphereheaded by two orders of this Court, reminding them of their duty to society, and the procedural mandate, they were bound to necessarily follow.

2. Now the facts :- Petitioner Krishnappa is Accused No. 11 in Crime No. 156 of 1986, registered at Keelamangalam Police Station on 30-12-1986, on a first information report preferred by Ramesh, in respect of an occurrence, that had taken place at about 7 a.m. on the same day at Thotta Perur village. The crime was registered under sections 147, 148, and 307, IPC. There appears to be two factions in the village. Due to factional dispute, two occurrences had taken place on the morning of 30-12-1986 leading to registration of Crime Nos. 155 of 1986 and 156 of 1986. In Crime No. 155 of 1986, the gravest offence of registration, was murder. After investigation, a final report was filed in the said Crime No. 22-12-1987 by P. K. Balasubramaniam, the then Inspector of Police, Keelamangalam Police Station. He was in charge of investigation in Crime No. 156/86 as well. But for reasons best known to him, he did not choose to complete investigation and forward a report under section 173, Cr.P.C. to the concerned Magistrate. We are now concerned in this petition with crime No. 156 of 1986, in which the overtact attributed to the petitioner is, that he beat the first informant with a stick along with others and kicked him as well.

3. The petitioner at the time of occurrence was working as a Teacher in a Primary School at P. Chettipalli village. On becoming aware, of the involvement of the petitioner, in this crime. The District Educational Officer, by an order dated 14-3-1987, placed the petitioner on interim suspension, with retrospective effect from 31-12-1986, the date of his production for remand, before the committal Magistrate. This order of suspension, is stated to be in force, till this day. The petitioner, after patiently waiting for about two years, with a fond hope, that investigation would be completed and a charge-sheet laid before the Court, to facilitate his getting exonerated, being disappointed, chose to approach this Court, by preferring CrI. M.P. No. 7816 of 1988, invoking the inherent powers, pleading for directions to the respondent/police, to file a final report. Bashkaran, J., noting about the suspension of the petitioner, coupled with the inaction of the respondent/police, on the basis of the submissions of the learned Public Prosecutor, that directions may be given to the respondent to file a final report, since the respondent had not chosen to turn up in spite of two messages, ordered as follows :-

'After hearing the learned Counsel for the petitioner and due to the circumstances the petitioner is under suspension for more than a year for the simple reason that a case has been registered against him without any further investigation in the case, I feel the respondent/police cannot keep quite indefinitely and they have to file the final report. Therefore I direct the respondent/Police to file the final report within a month from the date of receipt of this order.'

The Order of Bashkaran, J. was pronounced on 18-11-1988. The petitioner, the Court and the Public Prosecutor would certainly be justified in their expectations that the respondent would strictly adhere to the direction issued by his Court and within a short-while thereafter the final report would adorn the table of the Committal Magistrate. That expectation was nothing but a mirage. Not only the Investigating Officer but even his superior officers seemed to have turned a blind eye to the direction of this Court, which in effect reminded them of their sacrosanctity.

4. The petitioner, agonized by the weight of continuing suspension and total inaction on the part of the investigating agency, for a few more months, approached this Court overagain in or about March 1989, by preferring Criminal M.P. No. 2361 of 1989, with a renewed plea for direction to the respondent to file a final report in Crime No. 156 of 1986.

5. While in charge of the admission Court expressing my anguish, I passed the following order on 27-3-1989.

'It appears on the facts stated in this petition that Crime No. 156 of 1986 has been registered by the respondent against the petitioner and others for offences under sections 147, 148 and 307 Indian Penal Code in respect of an incident which is said to have occurred on 30-12-1988 at 7-30 a.m. at Thottapelur. I find that on an earlier occasion in CrI.M.P. No. 7816 of 1988, Bashkaran, J. had directed the respondent to file the final report within one month from the date of his order, the date of order being 18th November, 1988. It is very clear that there is abject neglect on the part of the prosecuting agency in not only having disobeyed the order of this Court but else in not having filed the final report as yet. The reason given for this negligence is that the respondent Inspector of Police is involved in a

case of rape and he is holding the case diary with him. It is unfortunate that the higher police officials have not applied their mind to get at the case records immediately from the erring police official and direct any other competent police officer to investigate the case and file the chargesheet. This negligence on the part of the prosecuting agency affects the valuable right of the accused under Art. 21, of the Constitution of India.'

This order was again passed after hearing the Government Advocate, Criminal Side.

6. The order extracted above, gives out a cause for delay in investigation though the cause by itself, presented by the prosecution, cannot stand a moment's scrutiny. However keeping in view, that the rights of the victim, in a case of attempt to murder, must be equally protected, I furnished an opportunity, to higher officials, to get at the case records immediately from the erring Police Officer, and issue directions to any other competent police officer to continue investigation and file the final report. The investigating agency was reminded of the Constitutional right of the petitioner, to have a speedy trial, in accordance with the procedure established by law. Specific directions were issued to the Superintendent of Police, Dharmapuri District, to entrust investigation in this crime, to some other competent Inspector of Police, for immediate investigation and filing of the final report. Copies of this order were forwarded to the Sub-Inspector of Police, Keelamangalam, Superintendent of Police, Dharmapuri District, Director General of Police, Madras and the Public Prosecutor of this Court. A copy was forwarded to the Director General of Police, for monitoring further action. That directions issued on the second occasion, by this Court, also, fell on deaf ears, will be evident from further narration of facts, which follow hereafter.

7. Petitioner Krishnappa, almost suffocated by the Order of suspension, which prevented his entry into the Primary School, for over three years, helpless and dejected, preferred this petition on 16-11-1989, pleading for quashing further investigation in Crime No. 156 of 1986, in so far as it concerned him. For easy reference, we have to recapitulate at this stage, that the second order of the High Court was pronounced on 27-3-1989.

8. One would have normally expected, speedy action by the Superior Police Officer, keeping in view, the time permitted for completion of investigation by Bashkaran, J. on 18-11-1988. It is not as though this Court was restricting the time-frame of the investigating agency in doing its duty, but was only opportunity reminding of its lethargic action, if not dereliction of duty.

9. Crl.M.P. No. 15045 of 1989, was taken on file on 18-11-1989. The petitioner and the respondent, not having moved this Court, for expeditious disposal, this matter, in the usual course, was taken up for hearing on 30-12-1991. The Additional Public Prosecutor was unable to furnish any information about the fate of this investigation, and pleaded for some more time, for verification. A chance was afforded to the prosecution to obtain information and the petition stood adjourned to 6th January, 1992, when it was heard in part. On 6-1-1992, a counter affidavit was filed by K. Peria Gounder, the present Sub-Inspector of Police (Crimes), Keelamangalam Police Station. In the affidavit, he claims to have joined duty at the concerned police station on 18-12-1991. He was in charge of this case, since the Inspector, Kumaresan was on medical leave, for the past 3 1/2 months. He has further stated, that the then Inspector of Police, Balasubramanian, who had registered the case, had taken up investigation and examined only seven witnesses in a crime involving about 17 accused. From the file he was able to understand, that Balasubramanian had taken steps to arrest all accused as mentioned in the first information report. His understanding did not terminate there, but proceeded further, in his becoming aware of Balasubramanian having been placed under suspension and his having gone to his native place at Pudukottai. The deponent was further able to find, that this Court had passed an order on 27-3-1989, directing the Superintendent of Police, Dharmapuri District to entrust investigation of this case to some other competent Inspector of Police for immediate investigation and for filing of the final report. The case diary in this case was taken away by Balasubramanian, the then Investigating officer and hence investigation could not be proceeded with further, purely due to the non-availability of the case diary file. He has disclosed in his affidavit, that he learnt from the case diary file, that Grade I Police Constable Subramaniam, had collected the case diary from the investigating officer who was then under suspension, from his native place, at Pudukottai, on 19-12-1989. Curiously he would further state in the

affidavit, that he investigation could not be proceeded with further, since this Court had granted stay of investigation, even on 18-11-1989, one month prior to the collection of the case diary, from the suspended Inspector of Police. A plea for dismissal of this petition, crowns the counter affidavit.

10. The intention of the Prosecution, through its officer was to inform this Court, that investigation was at a standstill, only due to an order of stay, passed by this Court on 18-11-1989, totally overlooking the fact, that from the end of 1988 this Court had issued directions twice, not only for quick investigation and filing of final report, but also for expeditious collection of the case diary from the erring police official. The attitude of the investigating agency had not only sent waves of shock, but has also only sent portrayed abject disobedience to Court orders, as though the orders were just like waves, which have to return after dashing against re-enforced concrete banks. The learned Government Advocate was unable to furnish details of action, taken by the investigating agency, between 18-11-1988 and the date of hearing. There was no alternative other than issuing notice for contempt to the then Inspector of Police, Keelamangalam Police Station and the Superintendent of Police, Dharmapuri, It was felt, that in the event of this Court arriving at conclusion, that due to laxity in investigation, the petitioner may have to be exonerated, the victim of the offence should not be placed at a disadvantageous position, and he may have to be duly compensated. Therefore a notice was directed to be issued to the Home Secretary, State of Tamil Nadu, to afford an opportunity to the State Government, to put forth its submissions on the issue of compensation, if a need therefore arose.

11. Mr. B. Sriramulu, learned Public Prosecutor and Mr. I. Subramaniam, learned Addl. Public Prosecutor represented the cause of K. Shanmughanathan, the then Superintendent of Police, Dharmapuri District and the present Deputy Commissioner of Police, (Crime) North, Madras City and K. Nataraja, Inspector of Police, who was entrusted with further investigation in Crime No. 156 of 1986 by the Superintendent of Police. Mr. K. Sridhar, learned counsel appeared on behalf of P. K. Balasubramaniam, who commenced investigation in Crime No. 156 of 1986, and was later placed under suspension on and from 5th August, 1988. The stand taken by each one of these police officials will have to be now noticed. K.

Shanmughanathan, was working as Superintendent of Police, Dharmapuri District between 20-2-1989 and 28-3-1990. He was holding office at Dharmapuri, when this Court issued directions in CrI.M.P. No. 2861 of 1989 to him, on 27-3-1989. He claims to have received the order, only through his superior officer D.I.G. of Police, on 27-4-1989, though this fact has not been specifically stated in the counter affidavit. He issued a memo to the Deputy Superintendent of Police Dharmapuri, on the same day, to discuss with him the above matter. He further found, that P. K. Balasubramaniam, who was investigating the case earlier had failed to hand over the C.D. file. In the monthly crime meeting held between March and September, 1989 he had issued necessary instructions to the Deputy Superintendent of Police and Inspector of Police to take stern action against officers, who have not handed over the C.D. and to take effective steps to collect them from the officers concerned, not only in respect of this case, but also with regard to all other cases in which investigation had not been completed for similar reasons. He further instructed the Sub-Inspector of Police, Keelamangalam Police Station to register a case on 27-5-1989 itself, against Balasubramaniam, the initial investigating officer. Again on 1-6-1989 he gave VHF message, to the Sub-Inspector of Police, Keelamangalam to register a case against the erring Inspector of Police. On 1-6-1989 Crime No. 135 of 1989 under section 379 Indian Penal Code, was registered against Balasubramaniam. On 28-6-1989, Shanmughanathan sent a memorandum to the Assistant Superintendent of Police, Hosur directing him to entrust the investigation in Crime No. 156 of 1986, to some other competent Inspector of Police, for immediate investigation and for filing the final report. He claims to have sent memorandums, over again on 22-8-1989 and 1-9-1989, to the Assistant Superintendent of Police, to take immediate action in the said matter. On 8-9-1989, the Assistant Superintendent of Police sent a reply to him in detail, in which he stated, that the then Inspector of Police, Balasubramaniam who has investigated the case on 30-12-1986, had arrested the accused and had them remanded. However, he did not complete investigation and the said Inspector of Police was suspended in 1988, on a grave charge. He had not handed over the case diary, not only in this case, but also in 9 other cases. In spite of instructions to the Inspector of Police, Royakottai to get the case diary returned, by the then Inspector of Police, the former reported, that he could not take up further

investigation, since the latter had not written and completed the case diary, and the case was in the FIR Stage. Inspector of Police Royakottai further reported, that he was in constant touch with the then Inspector of Police, Balasubramaniam who had assured him, that he would write the case diary and hand over the same before 10-9-89. Shanmughanathan would further claim in his counter affidavit, that on 26-10-1989 he sent yet another memo to the Assistant Superintendent of Police, Hosur to direct the concerned Inspector of Police, and lay a charge sheet, soon in his crime. He also requested the Assistant Superintendent of Police to deal with the delinquent officer, who was under suspension, under the Tamil Nadu Police Subordinate Service Rules, for not writing the case diary. On 11-3-1990, he sent another memo to the Assistant Superintendent of Police, Hosur to report the stage of this Crime. He was relieved from Dharmapuri about 17 days later, and he was able to notice from the case file, that memorandums were sent to the Assistant Superintendent of Police, Hosur on 5-6-1990 and 28-8-1990, to find out the present stage of this case. On 22-11-90, Inspector of Police submitted a reply, through the Deputy Superintendent of Police, stating that this Court has granted stay of investigation on 18-11-1989. He further found from the file, that the delinquent Inspector of Police had been departmentally dealt with, for not having handed over the C.D. file, by awarding a punishment of stoppage on increment for one year, without cumulative effect. According to Shanmughanathan, as soon as he had received the order of this court, he had immediately directed the Assistant Superintendent of Police, Hosur, to strictly comply with the directions. He had further chosen to send reminders, through letters and wireless messages. In conclusion, Shanmughanathan has stated in his counter affidavit, that he has great regard for this court and had not at any point of time, disobeyed court directions. He has further assured, that remedial measures will be taken to prevent such lapses in future.

12. Balasubramaniam, the Inspector of Police, under suspension, in his counter affidavit has stated, that he had no communication whatever of the orders of this court made in CrI.M.P. No. 7816/1988 and CrI.M.P. No. 15045/1989. No specific direction had been given to him to do anything. He has been under suspension from 5th August, 1988, to this date, and hence the question of his having disobeyed any order of this court and thereby committing contempt does not arise.

In any event, if this court were to find him guilty of any lapse or contempt, he was offering his unconditional apology. He has specifically denied, having taken away the case diary. He was arrested in yet another crime, when he was investigating it, due to political turns. He was only holding additional charge of Keelamangalam police station on 30-12-1986, as the then Inspector of Police was on leave. He took up investigation in crime No. 156/1968, examined witnesses and apprehended all the accused. The first information report, remand report, mahazars and other records were promptly forwarded to the Judicial II Class Magistrate, Hosur. He was arrested on 22-8-1988, by C.B. CID., Vellore and was released on bail on 29-8-1988, by Sessions Judge, Krishnagiri. This Court cancelled his bail on 2-9-1988, and was enlarged on bail over again, on 1-12-1988. As per the bail condition, he was staying at Nagercoil from 1-12-1988 to 3-1-1989. Thereafter the condition was modified and he was permitted to stay at Pudukkottai. There was a further condition, that he should not enter Dharmapuri District limits. According to Balasubramaniam, it was ridiculous to contend, that he had taken away the case diary, of a crime investigated long back in 1986. From August, 1988 till date, he had never stepped into the limits of Keelamangalam or any other police station in Dharmapuri District. On the contrary, it was the respondent (Sub-Inspector of Police, Keelamangalam) who was sending the case diary to him, on two occasions, through a police constable. On 23-4-1989, Elumalai (p. C592) came to meet him at Pudukkottai with the case diary in Crime No. 156/1986 and returned with the same. Again the same constable met him on 5-5-1989 with the case diary and went back with it. Only in 1990, after this court, was seized of the matter, disciplinary proceedings were initiated against him, to bolster their claim. Only in the departmental enquiry against him, he was made aware, that Crime No. 135/1989, under S. 379, IPC was registered against him and later action was dropped as the case diary had been recovered. He has further stated that the entries in the Keelamangalam Police Station general diary from 23-4-1989 to 5-5-1989 will clearly show, that the case diary in Crime No. 156/1986, was not taken by him as alleged, but the same was available, with the respondent. He has further pointed out that the then Inspector of Police Keelamangalam in his visiting notes has ordered disposal of Crime No. 156/1986, along with several other cases. He has prayed for appropriate directions to set

right the great injustice done to him.

13. K. Natarajan, Inspector of Police, Royakottai, from 7-12-1988 to 8-3-1991, has sworn to a counter affidavit, in which he has stated, that after the suspension of Balasubramaniam, who did not write the case diary, due to his having been suspended, he took charge of the circle on 7-12-1988. On instructions by the Superintendent of Police Dharmapuri, Vivekananda, Sub-Inspector of Police Keelamangalam registered Crime No. 135/1989, under S. 379, IPC, on 1-6-1989, against Balasubramaniam, Inspector of Police. For the orders of Superintendent of Police, Dharmapuri and Assistant Superintendent of Police, Hosur, directing him to obtain the concerned C.D. from Inspector of Police Balasubramaniam, for completion of investigation and filing of final report, he had sent a reply to the Assistant Superintendent of Police on 1-9-1989, stating as follows :-

'I could not continue further investigation since the C.D. file is not available and the case is only in the FIR stage. In spite of the effective steps taken by me to collect the C.D. duly written by Thiru R. K. Balasubramaniam, he did not hand over the C.D. file and when I personally met him at Krishnagiri, he assured me that he will send the C.D. file by 10-9-1989 and on receipt of the C.D. file I will complete the investigation and file a final report by 15-9-1989.'

He claims, that he did not make further investigation, since the predecessor Inspector of Police, did not complete investigation. If he started to investigate the case afresh, without knowing the stage of previous investigation, it would cause material prejudice to the prosecution as well as the accused. Hence he took necessary steps to collect the C.D. file. On 9-9-1989, he sent P.C. 911 to Pudukottai to collect the C.D. file. However, he was informed on 12-9-1989 by P.C. 911 that Balasubramaniam was not available at Pudukottai. Again on 29-11-1989 he sent P.C. 484 to Pudukottai, who informed him that Balasubramaniam had gone away to Madras. Again he deputed the same constable on 2-12-1989 to go on special duty to Pudukottai and remain there till the arrival of Balasubramaniam and collect the C.D. file. The C.D. File was collected on 19-12-89 and handed over to him. Meanwhile this court had stayed investigation by an order dated 18-11-1989 passed in CrI.M.P. No. 15046 of 1989. On receipt of the

case diary on 19-12-89, he found, that the investigation had been completed, except the arrest of A.1. Investigation clearly disclosed, that all the accused had committed offences punishable under Sections 147, 148, 323, 325 and 307, IPC, and they have to be prosecuted, before the competent Court. He has further stated, that he has completed 37 years of service in the Police Department and was to retire on 30-11-1992. He had made sincere efforts to get at the C.D. file duly written by Balasubramaniam, but still, the matter unfortunately got delayed for reasons earlier stated by him. He has tendered an unconditional apology.

14. P. Kumaresan, the Present Inspector of Police, Royakottai submitted, that a perusal of the case diary disclosed, that except the arrest of A.1, investigation had been completed by Balasubramaniam, who had examined nearly 16 witnesses, including official witnesses. Injured Siddaramaiah had sustained ten injuries over his person including a grievous injury on his right wrist. Apart from the injured, there were two other eye witnesses. He has prayed for vacating of the stay order, so that he will be in a position to arrest A.1, and file the final report, under section 173, Cr.P.C.

15. Mr. B. Sriramulu, learned Public Prosecutor contended, that whatever can be said of the dereliction of duty by the concerned Inspector of Police, nothing adverse could be stated, against the then Superintendent of Police, Dharmapuri District, since he had taken effective steps to have the investigation completed by another competent Inspector of Police, in Crime No. 166/1986. He further pleaded, that there was no wilful disobedience to the orders of this Court by any of the Police Officials, and the unfortunate involvement of Balasubramaniam, Inspector of Police, who commenced investigation in yet another crime as an accused, had led to his mismanagement, in investigation. He urged this Court, to drop contempt action.

16. Mr. K. Sirhar, learned counsel representing Balasubramaniam, submitted that the Balasubramaniam had not been put on notice, of any of the orders of this court and in any event, since he was under suspension from 5-8-1988 long prior to the orders passed by this court, he could not be held to have committed any contempt. When certain irreconcilable infirmities, which I will refer to later, were pointed out

to the learned Public Prosecutor, he submitted, that they were indefensible and all that he could do would be direct the investigating agency, not to allow such informities to creep up in future.

17. Regarding payment of compensation to the petitioner, who has been under suspension for over five years, the Public Prosecutor submitted, that he would persuade the State to revoke the order of suspension immediately and have the petitioner reinstated. If that could be done, he contended, that a case for compensation may not arise. At my instance, Shri N. T. Vanamamalai, learned Senior Counsel addressed arguments on the possibility of awarding compensation either to the accused in the crime of the victim, in a given set of circumstances.

18. I have carefully examined the contentions advanced by either counsel and meticulously scrutinised the averments made by the petitioner in his petition for halting this prosecution and the contents of the counter affidavits, of different police officers. It is normally believed, that tails do not wag without the heads. But there we have a case where the subordinate police officers have told their superiors, that they would not either investigate the case or even for registration of a crime, they have to be reminded over and over again, by the highest police chief of the District concerned. This attitude of the subordinates, if had been put an end to, even at the budding stage, melancholy experienced all round by everyone concerned in this petition, would not at all have surfaced. The attitude of the subordinates, further pinpoints, the lack of effective control, supervision and inability to lead, by the higher hierarchy of officers, the net result being a farewell to 'devotion for duty'. The counter affidavit of K. Shanmughanathan shows, that he became aware of the order of the High Court passed in Crl.M.P. No. 2361/1989, only on 27-4-1989, a month after the order was passed, though the High Court has communicated directly, a copy of this order to the Superintendent of Police, Dharmapuri, even on 29-3-1989, I am inclined to take it, that the Superintendent of Police, Dharmapuri District, became aware of the order of the High Court only on 27-4-1989. It may be that he had initiated discussion with the Deputy Superintendent of Police. But the fact remains, that only on 27-5-1989, a month after he became aware of the order of the High Court, he had directed the Sub Inspector of Police, Keelamangalam Police Station, to register a crime against

Balasubramaniam, under section 379 Indian Penal Code, for having committed theft of C.D. in Crime No. 156/1989. It appears odd, that in spite of his instructions, the Sub Inspector of Police, Keelamangalam Police Station, did not take any action for four days. The Superintendent of Police, Dharmapuri had to remind him, over again, by a VHF message on 1-6-1989, to register a crime of theft, against Balasubramaniam. The registration of a crime, against Balasubramaniam, has been done five weeks, after the Superintendent of Police became aware of the order of the High Court and nine weeks after the order itself. Once a crime was registered against Balasubramaniam under Section 379, IPC on 1-6-1989, one would have normally expected, the Sub-Inspector of Police to have sprung into action against the erring police official, and seized the case diary. No such action was taken by the Sub-Inspector of Police and it is surprising that Shanmuganathan did not take any further action, especially when the High Court had directed prompt action since the petitioner (All) was under suspension for a few years, purely due to non-investigation, in this crime. A vigilant superior officer would have either pulled up or taken suitable action against the Sub-Inspector of Police, for dereliction of duty, in not having registered the crime on 27-5-1989. Twenty eight days later the Superintendent of Police had thought it fit to sent a memorandum to the Assistant Superintendent of Police, Hosur, directing him to entrust the investigation in crime No. 156/1986, to some other competent Inspector, for prompt investigation and filing of the final report. In effect two months had elapsed, since the Superintendent of Police, became aware of the order of the High Court. If only the Superintendent of Police has spent a little time, in perusing the order of this Court, in Criminal M.P. No. 2361/1989, he would have become aware, that the order of Bashkaran, J. made in Criminal M.P. No. 7816/88, dated 18-11-1988, had already been disobeyed and any further delay in investigation would be fraught with serious consequences. The order of the High Court dt. 27-3-1989, had taken note of the involvement of Balasubramaniam in a case of rape and his holding the case diary as well. In such a background, it is rather surprising, that the Superintendent of Police, Dharmapuri, sought merely to send memorandums or reminders to the Assistant Superintendent of Police, to take immediate action, and did nothing further. The Assistant Superintendent of Police, in his turn, had strictly followed the path paved by his superior, in not having taken direct action, but

resting satisfied, with the issuance of orders to the Inspector of Police of Rovakkottai, to get the case diary from the erring Police Inspector. All these police officials must have known, the Balasubramaniam had no right to have in his possession, either the case diary in Crime No. 156/1986 or the case diaries in 9 other cases, which itself appears to be a revelation. I am unable to understand, why there was so much of soft-peddalling, when the erring Inspector of Police had surreptitiously kept 10 case diaries in his custody. In the usual course, if a crime gets registered for an offence of theft, immediate action would be expected to trace the culprit, and seize the property. It is not as though the culprit was not known in this crime. Not only the culprit was known, but his place of residence was equally within the knowledge of the concerned police officials. Instead of seizing the case diary, it looks rather strange, that all these police officials either directly or indirectly were requesting the delinquent Inspector of Police to handover the case diary and the latter fixing up dates at his sweetwill to deliver the same. Was this abject inaction, due to the fact, that the accused in Crime No. 135/1989 registered under section 379, IPC, was a co-police officer Even if they did not want to arrest Balasubramaniam immediately after the registration of this crime, when he was dodging to handover the case diary, which according to every other officer, other than Balasubramaniam himself, was in the custody of the erring the police officer, it is not understandable, why even after he commenced playing the dodging game, seizure of those diaries, were not effected. If the delinquent official had been suspended even on 5th August, 1988 and naturally relieved of his responsibilities in conducting this investigation, it passes one's comprehension as to how he was asked to complete the investigation, by filling up the case diary, especially when the succeeding Inspector of Police has reported, that the case was in the first information stage, and hence he could not take up further investigation. Does it then mean, that even without conduct of investigation after the first information report stage, the erring officer was directed to fill up the case diary, without contacting the witnesses or recording their statements If on the other hand, the Inspector of Police, Royakottai, who was directed to further investigate knew the Balasubramaniam had not written and completed the investigation and the case was only in the FIR stage, what then prevented him from continuing the investigation and laying the final report, as directed by the High Court. How was it

possible for the Inspector of Police, Royakottai to refuse to take up further investigation, which refusal appears to have been weekly swallowed by the Assistant Superintendent of Police as well as the Superintendent of Police as well as the Superintendent of Police. Should not both these officers pulled up the Inspector of Police Royakottai, for insubordination. It is all the more amazing, that periodically police constables were sent to the suspended police officer to write and hand over the case diary, for it only reminds the tamil saying (Vernacular matter omitted). To whatever extent the case diary was available, it must have been seized and conduct of further investigation proceeded with. Admittedly, the case diary was seized from Balasubramaniam on 19-12-1989. If that be so, why were communications several in number dated 27-12-1989; 19-7-90; 27-9-90; 22-11-90; 18-6-91; 3-7-91 and 31-9-91 sent, for finding out the fate of action taken, in Crime No. 156 of 1986. The Superintendent of Police in his counter affidavit has stated that he found from the case file, that memos were sent to the Assistant Superintendent of Police, Hosur on 5-6-90 and 28-8-90, to find out the present stage of this case. That would obviously be unnecessary if the case diary had been seized on 19-12-1989, for then investigation must have been speeded up and the final report filed, without any further delay. The dates listed after 19-12-1989, a little earlier, were furnished to Court by Mr. R. M. Kannappa Rajendran, learned Government Advocate, who was instructed in Court, by Shanmughanathan and another Inspector of Police. When this Court asked for the said file, which contained these letters, on instructions of Shanmughanathan, Mr. R. M. Kannappa Rajendran represented to Court, that the file was at Dharmapuri and cannot immediately be produced. When action for contempt was thought of, within about an hour and a half, in the afternoon Session, the learned Public Prosecutor, to the astonishment of the Court, submitted that the file which was stated to be at Dharmapuri, was available for inspection. The natural inference is that the file was sought to be suppressed from Court's scrutiny, in the morning Session, whatever be the reason. Only thereafter contempt action was initiated. It is in this background, that the stand taken by the erring the police official Balasubramaniam, about his non possession of the case diary after 5-8-88 appears prima facie probable. He was prevented from stepping into the limits of Keelamangalam or any other police station in Dharmapuri District. The Police

Station general diary and the visiting notes of Inspector of Police, Keelamangalam, which were furnished to him during disciplinary proceedings and which have been placed before me for scrutiny, further probabalise availability of case diary at Keelamangalam police station. If diaries were available at Keelamangalam, it is not understandable why as claimed by him, the case diary was sent to him on two occasions, through two different constables. When questioned in Court, he stated that he had completed investigation in Crime No. 156 of 1986 as well in 1987, but he was unable to explain why he did not lay the final report before the committal court, when in Crime No. 155 of 1986 he had laid the final report on 22-12-1987. The picture presented by either side leaves so many loose ends, while clansmen of the police department had, for reasons best known to them, not placed the entire truth regarding the whole episode. The learned Public Prosecutor submitted, that if the case diary was available at Keelamangalam Police Station, there was no reason whatever, for not laying the final report. This argument though attractive at the first blush cannot be upheld for the nature of action taken against the delinquent official in Crime No. 135 of 1989, is equally astonishing. It is conceded, that Balasubramaniam had in his custody illegally, as a result of commission of theft, ten case diaries referable to various crimes. But still on the very date of seizure of the case diary, on 19-12-1989, the Sub Inspector of Police Vivekanandan, had the courage to close the crime, with an endorsement 'action dropped as the case diary has been recovered'. If it had taken several months, as claimed by the Superintendent of Police to retrieve the case diaries, from the erring officer, it is not possible to comprehend why with such a great hurry, crime registered for theft was closed, even without a nod from the superior police officers. Was this Sub-Inspector of Police empowered to close the crime as it suited his whim and fancy, due to indirect nod by the higher ups It is fairly clear, that there is something more than what meets the eye. The result of not wanting to take action efficiently and effectively, in spite of the orders of the High Court, has led to non-filing of a final report, in a crime registered in the year 1986. When Criminal Procedure Code (Act 2 of 1974) was ushered in, on first April, 1974, it had two relevant new additions. One was limitation and the other was the right of the accused to be released on bail, whatever be the graveness of crime if the final report was not filed within the statutory period mentioned in the proviso to Section

167(2) Cr.P.C. The object of these two sections must obviously be for giving pressure on the organs of prosecution, to make every effort to ensure detection and punishment of crime quickly. The idea, behind these provisions, was to prevent disappearance of material evidence either due to non-availability of the persons themselves or fading of memory. The aim was also to prevent vexatious and belated prosecutions, clearly in consonance with the concept of fairness of trial, enshrined in Art. 21 of the Constitution of India. Again providing for the release of an offender after the statutory period mentioned in Section 167 Cr.P.C., in the event of a final report not being laid, only exhibits anxiety of the law makers, to instil time conscience, in the investigating agency. 18 years have rolled by, after Act 2 of 1974 was ushered in, and still inaptitude and lethargy survive.

18A. At this stage, it must be mentioned that a copy of the order of this Court, made in Criminal M.P. No. 2361 of 1989, on 27-3-1989, was marked to the Director General of Police, Madras for monitoring further action. The copy was forwarded by the Registry of this Court on 29-3-1989. It is not known, as to what action the Director General of Police initiated in this matter. It is quite possible to conceive, that every superior officer in every department, leave alone the police department, may not be able to keep in touch or supervise each and every action of a subordinate, but once a specific case had been brought to his notice, the Director General of Police must have kept track of this crime and monitored further action. If only that had been done, the sorry state of affairs which we are facing now, would not all have existed. I am constrained to mention at this stage, that no police officer thought it fit to instruct the learned Public Prosecutor, when Criminal M.P. 7816 of 1988, was heard by Baskaran, J. on 18th November, 1988. To recapitulate, the learned Public Prosecutor had submitted before Justice Baskaran, that in spite of two messages having been forwarded, the respondent-police, had not turned up and therefore a direction, to expedite investigation within a time frame could be given. It savours, as though a hide and seek game is being played, forgetting the rights and liberties of citizens, be it the offender or the victim, in a crime. Again in my order dated 30-1-1992, while issuing notice to the contemnors, I have observed that negligence and dereliction of duty was apparent from 1988 and the process seemed to be continuing. Evasive replies and irresponsible counter affidavits, have again clouded the truth. Judging the facts in

its entirety, it is seen that Balasubramaniam was suspended on 5-8-1988 and hence he cannot be held to have committed contempt.

18-B. As far as the then Superintendent of Police Dharmapuri District is concerned, though he had initiated action, belatedly, without the 'spirit', with which it ought to have been done, in view of his claim of having imposed faith of his subordinates, I deem it not necessary to hold him liable for contempt, though the fact remains, that he had no control what-so-ever over his subordinates.

18-C. Having dropped action for contempt, a decision will still have to be made, on the need or otherwise to compensate the petitioner, who has been kept in continued suspension, from 14-3-87, solely on the basis of his arrest and remand in Crime No. 156 of 1986. There are two ways of looking at it. One is that the petitioner can himself seek for revocation of the order of suspension and get himself reinstated, if orders endured in his favour. The other way of looking at it would be the effect of the offer made by the learned Public Prosecutor to persuade the State Government to reinstate the petitioner in service forthwith, by withdrawing suspension and promptly paying his back-wages. The Court has a bounden duty to protect the life and liberty of every citizen. The Court can also grant compensation to repair any damage done to the rights of the citizen by the State instrumentalities. Either of these grounds cannot alter the 'compensation issue'. Reinstatement or payment of back-wages concern a different sphere. It cannot compensate the agony and anguish experienced by the petitioner, who had knocked at the doors of this Court, on three occasions, complaining about the abject inaction of the investigating agency. The observations made by the Supreme Court in Rudul Sah v. State of Bihar : 1983 CriLJ1644 would serve as an useful reference, in this context (Para 10).

'Article 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders of release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Art. 21 secured is to mulct its violators in the payment of monetary compensation. Administrative Sylerosis leading to flagrant infringements of fundamental rights

cannot be correct by any other method open to the judiciary to adopt. The right to compensation is some palliative for the unlawful acts or instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield. If civilisation is not to perish in this country as it has perished in some others too well known to suffer mention, it is necessary to educate ourselves into accepting that respect for the rights of individuals is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the petitioner's rights. It may have recourse against those officers'.

If the tap at the door of this Court, by the petitioner, and the inaction of the investigating agency, in spite of orders of this Court, were to be held in a balance, the needle tilts in favour of the petitioner, who has suffered physical and mental agony for over six years, and not having been able to obtain relief in spite of two orders of this Court. The State is bound to compensate the petitioner. It cannot evade its responsibility, on the ground, that the acts done by the officials were individual wrongs or misdeeds. One cannot overlook that the concerned police officials had acted only under the powers vested in them by the State. The powers vested in the Police Officials cannot shield them, when the exercise of power is wrongful or in total oblivion of the rights and liberties of citizens. The State cannot have a protective umbrella to disengage itself from its liability to pay compensation, on the ground that wrongs committed by the officials should make them alone liable. The State is directed to pay a compensation of Rs. 20,000/- to the petitioner within six weeks from to-day. Merely because the petitioner is an accused in this crime, he cannot be denied an award of compensation, if we take note of all the efforts he had taken by approaching this Court several times, including draining of his limited finances, to speedily vindicate his innocence, which process had been thwarted by the total negligence of the investigating agency. Not only the petitioner has been unable to enter into the School compound, where he works, but also the members of his family have been left in tears and turmoil for a few years, not able to move freely in this world, the petitioner having been branded, as an under trial criminal. The State, if it deems fit, may have recourse against erring officers, and collect the compensation ordered to the petitioner in its entirety, from them, in the manner it chooses, after fixing the liability on those erring officials, not necessarily restricted to the officials, referred

to in his order.

19. After the decision to compensate the petitioner was arrived at, the learned Additional Public Prosecutor pleaded for an out of Court settlement, with the petitioner by the contemnors, so that the future prospects of the officials in their service, will not get marred. It was then observed that irrespective of any settlement outside Court, the details of such settlement would form part of the record of this proceeding. That was a bitter pill to the erring Police Officers. To my mind, it will be too difficult to hide a pumpkin in a morsel of food. This petition does not decide the promotional aspects, in the career of the concerned police officials, but only lays bare, injustice that had been meted out to the petitioner, in spite of palliative orders issued in his favour by this Court.

20. Mr. I. Subramaniam, learned Additional Public Prosecutor mentioned to-day that in or about 2 days the order of suspension on the petitioner would be revoked and he would be put back in service with prompt payment of back-wages. I have already held, that this procedure as usual cannot affect a decision on the award of compensation.

21. There is no need for compensating the victim in this crime, at this stage, since I am not quashing further proceedings in Crime No. 156 of 1986. On the ground of delay alone, it would not be proper or fair to quash the entire prosecution, especially when it is alleged by the victim, that he was attacked in broad day light by several persons who were armed with a variety of weapons. The prosecution and defence will have sufficient opportunity to place their respective cases before the concerned Court, in the event of a positive final report being laid against the petitioner and the other accused, by the respondent. The learned Public Prosecutor represents that the charge sheet is ready and only the ritual of presenting it in Court remains, after the stay order in Crl.M.P. No. 15046 of 1989 gets vacated. The stay ordered in Crl.M.P. No. 15046 of 1989 shall stand vacated and the final report which is stated to be ready shall be filed before the concerned Magistrate by the respondent, within ten days from to-day.

22. It is hoped that this case will serve as an eye-opener to all concerned and recurrence of such wrongs would be put down with a stern hand.

23. The net result is :

a) action for contempt dropped;

b) halting of investigation in Crime No. 156 of 1986 on the file of the Keelamangalam Police Station is refused;

(c) State Government is directed to pay a compensation of Rs. 20,000/- (Rupees twenty thousand only) to the petitioner within six weeks from to-day, with option to recover it from the erring police officials, after fixing liability; and

d) the final report in Crime No. 156/86 shall be filed within 10 days from to-day, since stay ordered earlier has been vacated.

I place on record the assistance rendered by Mr. N. T. Vanamamalai, learned Senior Counsel.

24. Order accordingly.

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