

K. Gopal Vs. the State of Tamil Nadu Rep. by Chief Secretary,

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Court : Chennai

Decided On : Jul-05-2005

Reported in : 2005(4)CTC241; (2005)3MLJ456

Judge : Markandey Katju, C.J. and ;F.M. Ibrahim Kalifulla, J.

Acts : Indian Penal Code (IPC) - Sections 149, 342, 384, 385, 406, 498A and 506;
Code of Criminal Procedure (CrPC) - Sections 156(3)

Appeal No. : Writ Petition No. 18955 of 2005

Appellant : K. Gopal

Respondent : The State of Tamil Nadu Rep. by Chief Secretary, ;inspector of Police and Nalla Thanneer Odai Kuppam

Advocate for Def. : V. Raghupathy, Government Pleader for respondents 1 and 2 and ;A.M. Rahamath Ali, Adv. for respondent 3

Advocate for Pet/Ap. : S. Prabhakaran, Adv. for ;D. Lingeswaran, Adv.

Judgement :

Markandey Katju, C.J.

1. Heard the learned counsel for the parties.

2. This writ petition illustrates an alarming phenomenon which has arisen in the State of Tamil Nadu over the last decade or so, which is gaining momentum, and which must be nipped in the bud now otherwise it will create serious law and order problems and anarchy in the State. This phenomenon is the mushrooming, particularly in the rural and coastal areas of the State, of wholly illegal and extraconstitutional institutions called Katta Panchayats which hold illegal kangaroo courts, issue unlawful decrees of excommunication from the village and imposition of huge fines against persons who have displeased them in some way, and commit acts of violence on such person if they disobey such decrees.

3. The writ petitioner K.Gopal has alleged in the affidavit filed in support of the writ petition that he is a practicing Advocate in the Madras High Court. He has alleged that he has been a victim of the Kattapanchayat system prevalent in his Kuppam (hamlet) as a consequence of which his family and he have been illegally excommunicated from the village and subjected to an illegal fine of Rs. 40,000/- and are facing imminent death threats.

4. It is alleged in para 3 of the affidavit that as a consequence of the Tsunami which swept the coast line on 26.12.2004, 77 families of his Kuppam (Hamlet) were affected with four deaths. His father Kapali died and his brother was swept away but managed to swim to the shore after 6 hours in the sea. He has further alleged that various voluntary organisations and philanthropists generously came forward with contributions in money and material, but the self proclaimed kattapanchayatdars of his Kuppam misappropriated huge quantities of the same by issuing a diktat that all relief materials belong to the Kuppam and not the families of the victims.

5. In para 4 of the affidavit it is alleged that Rev. Ezra Sargunam's Seva Organisation was kind enough to provide one boat each to the families of the victims directly and the petitioner's mother was provided with one such boat. However the third respondent panchayatdars began to demand the boat on the plea that all relief materials were intended for the Kuppam. When the petitioner's mother declined to hand over the boat to the third respondent panchayatdars they were arraigned before the panchayat and penalised with a fine of Rs.50,000/-

failing which they would be excommunicated. Bowing to the fiat of the katta panchayat and realising the inevitable consequences if they disobeyed its decrees they prostrated before the panchayatdars pleading their inability to pay the sum. Hence the panchayatdars finally extorted a sum of Rs.40,000/- from them instead of Rs.50,000/-.

6. It is alleged in para 6 of the affidavit that one Panchanathan and his four brothers belonging to the Kuppam procured three old fibre boats on loans from a Seva Organisation. The panchayatdars cast their covetous eyes on those three old boats also and demanded that they be surrendered to the katta panchayat. Upon their refusal to surrender the three old boats the panchayatdars passed a resolution and imposed a fine of Rs.1,50,000/-. Upon their inability to pay the same they were excommunicated.

7. In para 8 of the affidavit it is alleged that the orders of excommunication were promulgated by public announcements by loud speakers and effected by imposition of fines upon persons who dared to speak to their families, besides disconnecting the petitioner's cable T.V., water supply etc. It is alleged that when the police were approached they refused to register the petitioner's complaint and advised him to abide by the katta panchayat verdict.

8. It is alleged in para 10 of the petitioner's affidavit that annoyed by the petitioner's accompanying Panchanathan's brothers to the police station about 8 persons led by one Desinghu, the Ex President of the Sabha, Baskar, Seenivasan and Namdev kicked open the door of the petitioner's house and Desinghu intimidated him at knife point, while Seenivasan intervened and proclaimed responsibility for evicting the petitioner's family by threatening that he would burn their family alive by pouring petrol and setting them on fire if they failed to vacate the premises by the next day. The petitioner wanted to lodge an F.I.R. but the Inspector of Police did not register it. Because of the petitioner's daring to approach the police the kattapanchayat was pleased to excommunicate his family and the Kuppam-mates were injunctioned from interacting with the petitioner's family under threat of penalties.

9. In para 12 of the affidavit it is alleged that the petitioner approached the Joint Commissioner of Police who directed him to go to the Deputy Commissioner, Mr. Masanamuthu. Mr. Masanamuthu expressed his fears that if the police dared to enter the Kuppam the katta Panchayatdars would evict them by claiming that 'if you are D.C. in your Police Station we are the D.C. in our Kuppam.' So saying, the Deputy Commissioner also expressed his apprehensions that the Kuppathars would resort to road roko and other agitations and that the Government would then find fault with the police for annoying the Kuppathars.

10. In para 15 of the affidavit the petitioner has stated that this writ petition is not just about mere registration of a criminal case but involves a larger issue of the barbaric practices of unlawful Kattapanchayats existing in the State of Tamil Nadu along with the regular institutions constituted by law. 11. The petitioner has prayed that his complaint be registered and investigation made and the third respondent be directed to return the amount of Rs.40,000/- collected illegally by the Kattapanchayat.

12. An additional affidavit has also been filed by the petitioner about the incident which took place on 28.6.2005 at about 2.00 a.m. It is stated in para 3 therein that Panchanathan and his brothers returned their 2 boats to the panchayatdars, but the panchayatdars, instead of using the boats for the welfare of the Kuppam broke the boats by throwing big stones on them. They continued to treat the petitioner and his family and Panchanathan brothers as excommunicated and they did not allow them to draw water from the common water source, and the cable T.V. connection was not given back.

13. In para 4 of the additional affidavit further allegations have been made about the incident that took place on 27.6.2005. It is alleged that apprehending attack from the panchayatdars, Jagadeesan, Venkatesan and Panchanathan stayed together in their brother Perumal's house with their families. While they were asleep a group of people headed by Desinghu, Baskar, Sreenivasan, Madhavan, Namdev, Somu, Kesavan, Chandran, Rajee President, Parasuraman, Jayachandran etc. (around 70 people) in a group all armed with deadly weapons such as knife, aruval, kadaparai, iron rods etc. broke open the door of the house

and removed the asbestos roof and jumped inside and attacked the inhabitants including women and children who were injured and all of them were thrown out of the house and the household things were broken into pieces and many items were stolen. The mischief mongers razed down the three houses belonging to Panchanathasn and his brothers and went to the shop of Kalvi, who had supported the excommunicated family, and ransacked it.

14. A counter affidavit has been filed by the second respondent Inspector of Police and we have perused the same. In para 3, 4 and 6 of the counter affidavit it is stated that the complaint of the petitioner is an exaggerated one and the allegations in the petition are not true.

15. Since the allegations in the petition have been denied we are not making any comment on the correctness or otherwise of the same. However since the allegations are very serious we are directing the Magistrate concerned to treat this petition and the affidavits of the petitioner as a complaint under Section 156(3) Cr.P.C in respect of the above incidents. The Magistrate will direct the police to make a proper investigation, and shall also monitor the investigation to ensure that it is properly conducted.

16. In *Madubala vs. Sureshkumar and others*, AIR 1997 SC 3104 the Supreme Court has said that a Magistrate has power under Section 156(3) Cr.P.C. to direct the police to register a case and get it properly investigated and he has also power to monitor the investigation.

17. Although we are not making any comment on the correctness or otherwise of the allegations in the petition, we wish to make it clear that if these allegations are correct it is an extremely serious matter and if this trend is not curbed immediately it will lead to very adverse Law and Order situation in this State.

18. Mr. Rahamath Ali, learned counsel for the third respondent has stated that voluntary bodies have been existing since time immemorial to represent the interest of the people in the rural areas and fishermen's hamlets. In our opinion it is always open to the people to form voluntary private organisations but such organisations cannot exercise sovereign functions, and they cannot take the law

into their own hands as alleged in this case. Sovereign functions can only be exercised by the State or by the authorities constituted under the statute such as Municipal Corporations, Panchayats constituted under the Tamil Nadu Panchayats Act, etc. If the allegations in the petition are correct then it will mean that the third respondent is exercising sovereign functions like imposition of fine, issuing decrees, etc., and committing unlawful acts like depriving somebody from using water supply or electricity, excommunicating or expelling people from the village, etc. This can certainly not be done by private bodies. For instance, imposition and realisation of tax and fine or issuing decrees can only be done in accordance with some statute by the empowered statutory authorities, and it cannot be done by private bodies. Moreover, if the allegations of the petitioner are correct it means that the respondent - 3 has taken the law into its own hands, and is acting in a wholly unlawful manner like goondas and hooligans.

19. Hence if the allegations in the petition are correct the matter is extremely serious and the first respondent Chief Secretary, Tamil Nadu Government, the Home Secretary and Director General of Police, Tamil Nadu must see to it that this goonda by kattapanchayats is stopped forthwith throughout the State of Tamil Nadu and put down with an iron hand and dealt with seriously in accordance with law. If it is correct that a fine has been realised from the petitioner the Magistrate will ensure the return of that money to the petitioner and initiation of criminal proceedings under the relevant provisions of the I.P.C, Cr.P.C and other relevant statutes against the culprits.

20. Before parting with the case, we would like to mention that earlier also cases have come before this Court relating to the unlawful activities of kattapanchayats.

21. We may in particular refer to CrI.O.P.No.28886 of 2003, Rajendran and others v. State of Tamil Nadu, decided by this Court on 08.04.2004. In the said case, the allegations were that one Suganthi working as a Senior Telecom Office Assistant in the C.G.M.Office, Tamil Nadu Circle, Chennai and her mother Krishnammal, a widow working as a Headmistress in an Elementary School, were directed by six persons, claiming themselves to be Kattapanchayatdars of Valayapatti village, to pay a fine of Rs. 50,000/- for not having complied with their direction to Suganthi to

join her husband. Suganthi had alleged that she was treated very badly by her husband and tortured, and hence she left the matrimonial home alongwith her children and shifted to Cuddalore where she had been transferred, and then to Chennai. In March 2003 she sent a lawyers notice to her husband requesting consent for mutual divorce. At that time her mother was living alone in the village.

22. On 20.07.2003, she received a telephone call from her mother Krishnammal stating that the Panchayatdars are convening a panchayat at the instance of Suganthi's husband Rajendran and the Panchayatdars had asked both the mother and daughter to appear before them on 03.08.2003, failing which both the mother and daughter will be excommunicated from the village. Consequently, Suganthi, after applying for leave, leaving her children in her neighbour's house, left Chennai and went to the village on 03.08.2003, and appeared with her mother before the Panchayatdars. The Panchayatdars told Suganthi that she must live with her husband. When she refused, the Panchayatdars directed her to pay a fine of Rs.50,000/- for not complying with their directions, and when she said that she did not have that much money, they said that she and her mother would have to prostrate before the Panchayatdars if they wanted to reduce the fine. Suganthi prostrated before the Panchayatdars from 10.00 a.m. to 5.00 p.m. Her mother Krishnammal prostrated three times before the Panchayatdars, but could not do more than that, being an old lady. Hence the fine was reduced to Rs.19,058.75. Suganthi was directed to pay the said amount on the same day, or else Suganthi and her mother would be tied to the temple post. She somehow managed to pay the amount. But the Panchayatdars gave a further verdict directing Suganthi to come back to the village on 10.08.2003 alongwith her two children to produce them before them so that they could be handed over to the custody of her husband. Having suffered mentally and physically in the hands of the Panchayatdars, Suganthi came to Trichy, met the Superintendent of Police and presented a complaint before him which was registered as Crime No.7/2000 of All Women Police Station, Musiri Taluk for the offences under Section 498A, 342, 384, 385, 406, 506(i) and 149 IPC against 12 persons.

23. The petitioners in the aforesaid CrI.O.P.No.28886 of 2003 were the Panchayatdars who were alleged to have committed the aforesaid high handed

acts, and they applied for anticipatory bail through the aforesaid petition.

24. In paragraphs 13, 15 and 23 of the Judgment of this Court dated 08.04.2004 in the aforesaid Crl.O.P.No.28886 of 2003, it was observed: -

'13.On coming to know about the pendency of the enquiry before this Court over the unruly act of Kattapanchayatdars through the paper publication, the public, at large, sent several letters from all over Tamil Nadu to this Court, complaining about the similar incidents, harassing the victims by the Kattapanchayatdars in various areas and requesting intervention of this Court for giving directions to the Government to pass an Ordinance, prohibiting Kattapanchayats and making Kattapanchayat, a cognizable offence. Since this Court was flooded with similar letters, depicting various sad instances, wherein the victims have suffered heavily at the hands of Kattapanchayatdars in various centres all over Tamil Nadu, this Court thought it fit to direct Advocate General, to assist the Court, in deciding the issue. Accordingly, the Advocate General appeared before this Court. He was asked to clarify about the power of this Court, to give suggestions or directions to the Government, to issue an Ordinance on this aspect. The Advocate General fairly submitted that he would immediately write to the Government regarding the same and get the view of the Government with reference to the said issue. Since hundreds and hundreds of letters have been received by this Court, quoting similar incidents being taken place in all the areas of Tamil Nadu, this Court felt that it would be appropriate to appoint an Amicus Curiae, to assist this Court, to take suitable action with reference to the grievances made by the victims in those letters and accordingly, Miss R.Vaigai was appointed as Amicus Curiae. The matter was adjourned, to enable Miss.Vaigai and the learned Advocate General, to collect other particulars to enable this Court to pass final orders in the matter.

15. At this stage, learned counsel for the petitioners would submit that Kattapanchayat is being held in every village and the villagers are compelled to prostrate before them and made to pay fine and, by way of punishment, they are being ex-communicated, without knowing that those acts are prohibited under law. This submission has been endorsed by the other counsel as well.

23. When this Court has gone through the letters received from the public, nearing 1000 in number, would feel shocked that police agency is helpless and keeping quiet and the Kattapanchayatdars reign raised its ugly heads, controlling the entire area, as if they are the monarchs of the area, threatening even the educated people, who suffered at the hands of the so called Kattapanchayatdars, who were compelled not to go either to the police station or to the Court. It is clear from those letters that the law enforcing agencies, even though there are some provisions to indicate that the Kattapanchayat's imposition of fine and ex-communication are the offences, never cared to take action against the Kattapanchayatdars. This may be so, because the law enforcing agencies also may not be aware of the existing provisions of law.'

25. In the aforesaid judgment of this Court dated 08.04.2004, it is also stated: - (vide paragraphs 26, 27 & 28)

'26. According to the Secretary to Government, Public Department, the matter, relating to the Ordinance to be issued to curb the obnoxious practice of imposing punishments by Kattapanchayatdars, was considered by the Government. After consideration, the Government desires to implement the existing provisions effectively, by giving suitable directions to the officials concerned. In response to the suggestion made to the Government through the Advocate General, the Government sent a letter to the Director General of Police on 25.11.2003, directing him to give suitable instructions to the authorities concerned to the effect that whenever persons affected by the punishments imposed by the local Panchayatdars prefer complaints, immediate action should be taken, by registering an FIR. The letter dated 25.11.2003 reads thus :

'CONFIDENTIAL PUBLIC (L&O-C;)DEPARTMENT

SECRETARIAT, CHENNAI.9.

Letter No.7932/2003-3, dated 25.11.2003.From

Thiru T.Pitchandi, I.A.S.,

Secretary to Government.

To

The Director General of Police,

Chennai.4.

-----All the District Collectors.

Sir,

I am to inform that reports have been received by the Government that punishments are awarded by the local panchayats ('Katta Panchayats') in certain areas violating the provisions of law. The affected persons are mostly women and people belonging to the lowest strata of society. Therefore, in such cases whenever complaints are made by the affected persons against imposition of punishments in such 'Katta Panchayats' and if such complaints disclosed commission of any offence, under the Law, action should be taken on the complaints under the provisions of law. I am, therefore, to request you kindly to issue suitable instructions to the authorities concerned to the effect that whenever persons affected by the punishments imposed by the local panchayatdars prefer complaints and if such complaints disclosed commission of offences, action may be taken on the basis of the said complaints against the persons involved by registering F.I.R.

2. An action taken report may be sent to Government urgently.

Yours faithfully,

for Secretary to Government.'

27. Besides this, on 02.12.2003, the Chief Secretary sent a letter to all the Departments bringing to the notice that Rule 20(1) of the Tamil Nadu Government Servants Conduct Rules warns the Government Servants to maintain absolute integrity and shall do nothing which is unbecoming of a member of service' and further directed not to involve themselves in organising/convening/taking part in the Katta Panchayat and any violation of the instructions will be viewed seriously and disciplinary action would be taken. The letter dated 02.12.2003 reads thus :

'GOVERNMENT OF TAMIL NADU

Personnel and Administrative

Reforms (A) Department,

Secretariat,

Chennai-600 009.

Letter No. 53140/A/2003-1 dated 2.12.2003 From Tmt.Lakshmi Pranesh, I.A.S.,

Chief Secretary to Government.

To

All Secretaries to Government, Chennai-9.

All Departments of Secretariat, Chennai-9.

All Heads of Departments.

All District Collectors,

District Judges-and-District Judicial Magistrates.

The Registrar, High Court, Chennai-104.

The Registrar, Tamil Nadu

Administrative Tribunal,

Chennai-104.

The Secretary, Tamil Nadu Public Service Commission,

Chennai-2.

Sir,

Sub : Tamil Nadu Government Servants Conduct Rules, 1973 - Prohibition of Government Servants from convening and participating in 'Katta Panchayats' - Instructions Issued.

-----Rule 20 (1) of the Tamil Nadu Government Servants Conduct Rules lays down that 'every member of the service shall at all times maintain absolute integrity and devotion to duty and shall do nothing which is unbecoming of a member of service.'

2. The 'katta panchayat' has no legal sanctity and the punishments imposed by it are not enforceable under Law. It is really a challenge to the legally established courts. Conducting of katta panchayats may sometimes result in violation of human rights which may result in ill-treatment of people particularly in the lower strata of society. The involvement of Government servants in such katta panchayats may embolden the katta panchayats in imposing severe and corporal punishments on the victims. In these circumstances, the involvement of Government servants in 'katta panchayats' has to be considered a violation of the above said rule 20 of the Tamil Nadu Government Servants Conduct Rules.

3. The Government have, therefore, decided that the Government servants should neither participate nor heed to the decision of the ' katta panchayats' and that suitable instructions be issued in this regard.

4. Accordingly, the Government direct that the Government servants should not involve themselves in organising/convening/taking part in the 'katta panchayats'. Any violation of this instruction should be viewed seriously and necessary disciplinary action taken against the persons concerned for such violation. The Government also direct that these instructions should be brought to the notice of all the subordinate offices functioning under the control of the Heads of Department and District Collectors.

5. All the Departments of Secretariat are requested to issue similar instructions to the Public Sector Undertakings/Boards/Corporations and all other aided institutions under their administrative control for its strict adherence.

Yours faithfully,

for Chief Secretary to Government.'

28. In pursuance of the instructions given by the Government dated 25.11.2003, the Director General of Police sent a letter dated 04.12.2003, to all the authorities concerned, which letter reads thus :

'Most Immediate/Personal Attention :-

Rc. No. 257391/Cr.I (1) 2003.

Office of the Director General of Police,

Chennai-4.

Dated:- 04.12.2003.

CIRCULAR MEMORANDUM

SUB :- Crime-Punishments awarded by the local panchayats ('Katta Panchayats') in certain areas violating the provisions of law - Certain Instructions - Issued - Reg.

REF :- Government Letter No.7932/2003-3, Public(L&O.C.;;) Department, Dated:- 25.11.2003.

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In the Government Letter cited, it has been informed that reports are being received by the Government that punishments are awarded by the local panchayats (Katta Panchayats) in certain areas violating the provisions of law. The affected persons are mostly women and people belonging to the lowest strata of society. Therefore, in such cases, whenever complaints are made by the affected persons against imposition of punishments in such 'Katta Panchayats' and if such complaints disclosed commission of any offence, under the law, action should be taken on the complaints under the provisions of law.

2.Hence, all the Supdts. Of Police in Districts and Commrs. Of Police are, therefore, directed to give suitable instructions to all Subordinate Officers in their Districts/Cities during their Special Meetings to the effect that whenever persons affected by the punishments imposed by the local panchayatdars prefer complaints and if such complaints disclosed commission of offences, action should be taken immediately on the basis of the said complaints against the persons involved by registering F.I.R. 3.They are also directed to send an action taken report on the above subject to Chief Office before 15th of every month. 4.Receipt of this Circular Memorandum should be acknowledged at once.

Sd/-

Director-General of Police.'

26. In paragraph-41 of the aforesaid judgment, it was observed: -

' even after issuance of the circulars, still, we notice the news in the newspapers that Kattapanchayat system is still going on.'

The aforesaid remark of this Court in Crl.O.P.No.28886 of 2003 is borne out by the incidents which are mentioned in this case.

27. In our opinion, Kattapanchayatdars are nothing but mafia and hooligans, and kattapanchayat is simply taking the law into one's own hands by some goondas, who unlawfully claim to represent the village.

28. It may be mentioned that if one wishes to be a leader in the village or urban area, he can contest the elections to the Panchayat or Municipality or other local body constituted by the statute, but one cannot commit illegal acts like imposition of fine, excommunication, disconnecting water and electricity supply, threats or acts of violence etc. All these are criminal offences punishable under various provisions of the IPC and other statutes.

29. In our opinion, Kattapanchayats could not flourish in the first place without the collusion of the police and other authorities, or by their turning a blind eye to these unlawful activities. If such unlawful, extra constitutional activities are not put down

with an iron hand, there will gradually be a collapse of law and order and democracy in the State. Hence we direct all the state authorities to take strong action in accordance with law to put down these unlawful, hooligan activities which have mushroomed in several areas of the State of Tamil Nadu, and institute criminal prosecution against those who are involved. The Chief Secretary, Home Secretary and Director General of Police, Tamil Nadu are directed to ensure strict compliance of this order. They are also directed to take strong disciplinary action against the administrative and police officials who collude with the kattapanchatdars or turn a Nelson's eye to their illegalities and who do not register and prosecute criminal cases against these hooligans. The Chief Secretary will circulate copy of this judgment to all District Magistrates and Superintendents of Police in the State with a letter warning all officials that those who do not comply with the directions in this judgment will be severely dealt with.

30. The learned Advocate General will communicate this order to the Chief Secretary forthwith. Copy of this order will also be sent by the Registrar General of this Court to the Judicial Magistrate concerned along with copies of the writ petition and affidavits. The Magistrate will treat the affidavits of the petitioner in this petition as a complaint under Section 156(3) Cr.P.C. and he shall ensure a proper investigation by the police into the matter.

31. With the above observations, the writ petition is disposed off. However, to monitor the directions given above list this petition before the First Bench every three months (i.e. On 05.10.2005, 05.01.2006, and so on) on which dates compliance and progress reports must be submitted before us by the above-mentioned officials.