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**Srinivasan Vs. Kannappan.**

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**SooperKanoon Citation** : sooperkanoon.com/926189

**Court** : Chennai

**Decided On :** Mar-02-2012

**Judge** : Vinod K.Sharma, J.

**Acts** : Constitution of India - Article 226

**Appeal No.** : W.P. No.20878 of 2011 and M.P.No.1 of 2011

**Appellant** : Srinivasan.

**Respondent** : Kannappan.

**Advocate for Pet/Ap.** : Mr.R.Sankarasubbu, Adv

**Judgement** :

PRAYER: The writ petition has been filed under Article 226 of the Constitution of India for issuance of a writ in the nature of mandamus, directing the respondents 1 to 3 to consider the representation of the petitioner dated 29.8.2011 by holding detailed enquiry with regard to torture and harassment of the petitioner and his family members by the respondents viz., respondents 4 & 5 and to secure protection to the petitioner and family members.

## ORDER

1. The petitioner prays for issuance of a writ in the nature of mandamus, directing the respondents 1 to 3, to consider the representation filed by the petitioner, dated

29.8.2011 for holding departmental enquiry regarding torture and harassment of the petitioner, and his family members by the respondents 4 & 5 and to provide protection to the petitioner and his family members.

2 It is the submission of the petitioner, that he is residing at Hanusonai, Dommathathanur post, Devakarikottai Taluk, Krishnagiri District. The petitioner is living with his brother, who run EMU Poultry farm at Onnalvadi village. The brother of the petitioner also having two vehicles, i.e. Scorpio van and Tata 407 mini lorry.

3 The brother of the petitioner is leader of Samathuva Makkal Katchi and District Secretary of the Agricultural Wing, Krishnagiri District. The business turnover of his brother is more than Rs.10 lakhs per month and he is also human right activist.

4 The employees of the brother of the petitioner met with an accident on 31.07.2011 at about 9.30 p.m. His brother has employed two persons viz., Devaraj and Murugan on recommendation of his driver Senthil Kumar. The driver was arrested on 04.08.2007 under Sec.457, 380 I.P.C. and were remanded for 17 hours in illegal detention.

5 The case set up by the petitioner is that Senthil Kumar due to torture, implicated his brother Gopal alleging that he had handed over four sovereigns of gold, this according to the petitioner is wrong.

6 On the oral instructions of Mr.Anbumani, Sub Inspector of Police, the brother of the petitioner was produced before him, who along with respondents No.4 and 5 tortured him. His brother suffered untold sufferings, which resulted in dislocation of his left hand, and had other visible injuries on his bodies. He was freed on 07.08.2007 after receipt of Rs.2,50,000/- (Rupees two lakhs and fifty thousand only) from the petitioner.

7 The case of the petitioner is that his brother was beaten by the police with lathis and detained illegally. His brother was treated in St. Johns Medical College Hospital, Bangalore, where he spent Rs.50,000/- (Rupees fifty thousand only) for his treatment, and is still under the treatment.

8 The case of the petitioner is that respondent No.4 & 5 demanded 144 grams of Gold, to free his brother, from the cases registered against Senthil Kumar, Devaraj and Murugesan.

9 The petitioner made representation to the respondent No.3, alleging irregularities but no action has been taken.

10 On the pleading referred to above, a prayer has been made to take action against the respondents, departmentally.

11 In support of the petition, the learned counsel for the petitioner placed reliance on Police Standing Order 151, which stipulates that in case of allegation of torture or of causing death or grievous hurt or other serious offences made against Police officials, then in case of allegation of rape or commission of an unnatural offence, then an enquiry be held, irrespective of the fact whether the act or acts committed is in the course of duties or outisde the sphere of duties.

12 An Officer above the rank of Assistant or Deputy Superintendent of Police to whom a complaint is made immediately, shall enquire into the occurrence, and also report the case at once to the Revenue Divisonal Officer concerned. On receipt of allegation of commission of unnatural offence, Assistant or Deputy Superintendent of Police, should not make any regular investigation, but should report the case to officer to whom he is subordinate, and send a copy of the report to the Superintendent of Police.

13 This Rule further provides that complaint of such offence can be made in the Court of Judicial Magistrate by the affected parties, and on completion of enquiry, the Judicial Magistrate can decide the follow up action.

14 When the affected party does not file any complaint in the Court of Judicial Magistrate, the officer holding the magisterial enquiry should complete its investigation. It is only when officer who conduct enquiry under the order, finds that the Police officials concerned was guilty of some other offence not coming under this order, he should forward the report of enquiry to the Government through the Collector.

15 The reliance by the petitioner on Police Standing Order 151, is totally misconceived. The allegations are not of rape or unnatural offence. Even otherwise under Police Standing Order 151, report is required to be filed with Judicial Magistrate. The petitioner therefore, could not invoke writ jurisdiction without filing complaint with learned Magistrate.

16 The case of the petitioner also does not fall under this category. It is also not disclosed as to why the matter regarding demand of bribe was not reported to Vigilance and Anti Corruption department. The wild and baseless allegations cannot be a ground to invoke writ jurisdiction, as the fact not supported needs to be proved by leading evidence.

17 The story on the face of it, is not believable, for the reason, that the aggrieved party is brother of the petitioner, it is not understood why the petitioner has filed this petition. It is only in the case of Habeas Corpus petition that close relative or a friend detenue can file a petition in the High Court, otherwise, the writ petition can only be filed by the party aggrieved. The petitioner does not have the locus standi to maintain this writ petition.

18 It is also to be noticed with regret here that at the time of arguments, the learned counsel for the petitioner repeatedly stated that the petitioner and family members are very poor, and had no means to approach appropriate authority for redressal of the grievance, at the appropriate stage and therefore, had approached this Court. This stand is contrary to the pleadings, wherein the petitioner had pleaded that the turnover of his brother is more than Rs.10 lakhs per month from his business and furthermore, he is human right activist besides being President of Agriculture Wing. It is also disclosed that criminal cases are pending against his employees, where evidence has also been collected against brother of the petitioner. This writ petition is classic example of misuse of process of this Court, to assert illeal pressure on the investigation officer conducting enquiry into criminal cases.

19 Consequently, the writ petition is dismissed for want of locus standi of the petitioner to maintain this writ petition as also on merit. Connected miscellaneous petition is also dismissed.

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