

Vasanthi Vs. 1. the Home Secretary,

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SooperKanoon Citation : sooperkanoon.com/965849

Court : Chennai

Decided On : Apr-05-2013

Judge : N.Kirubakaran

Appellant : Vasanthi

Respondent : 1. the Home Secretary,

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

05. 04/2013 CORAM THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
Crl.O.P.(MD)No.14087 of 2012 Vasanthi ... Petitioner Versus 1. The Home
Secretary, Government of Tamil Nadu, Home Department, Fort St.George,
Secretariat, Chennai-9.

2. The Director General of Police, Office of the Director General of Police, Beach
Road, Chennai-2.

3. The Additional Director General of Police, CBCID, Office of the Additional
Director General of Police, CBCID, Chennai-2.

4. The Deputy Superintendent of Police, CBCID, Visalatchipuram 2nd Street,
Madurai-14.

5. The Superintendent of Police, Theni District.

6. The District Collector/District Magistrate Theni District.

7. The Inspector of Police, Kadamalai Kundu Police Station, Theni District. ... Respondents This petition is filed under Section 482 Cr.P.C. praying for a direction to the respondent No.3 to depute a women police officer, not less than the rank of Deputy Superintendent of Police to register FIR on the basis of the complaint preferred by the petitioner dated 30.8.2012 which discloses cognizable offences punishable under Sections 376(2), 323, 326, 341, 342, 348, 379, 352, 354, 509 and 506(ii) of IPC and 4(a) of Tamil Nadu Prevention of Women Harassment Act and Section 3(1) (X), 3(1)(XI), 3(1)(XII), 3(2)(V) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 and complete the investigation and file charge sheet within the time stipulated by this Court. !For Petitioner ... Mr.R.Alalgumani ^For Respondents... Mr.S.Prabha, Government Advocate (Crl.Side) :ORDER A lady knocks the doors of this court, alleging the sexual assault made on her in the lockup in the hands of 7th respondent police. If the allegations are true, it is shocking.

2. It is the case of the petitioner that to redeem her silvery anklet, she visited one Shokkayi, Nariyuthu village on 11.2.2012. However, the said Shokkyi, who is a relative of the petitioner and the Village President of Nariyuthu village, was unavailable. Therefore, the petitioner along with her so

1. /2 years old was waiting in Nariyuthu village bus-stand on 11.2.2012 at about 8.00 P.M. to go to Periyakulam. At that time two police men of Kadaimalaikundu Police Station enquired the petitioner and took her to police station forcibly, where, Rs.6700/- kept in the petitioner's bag to redeem her silver anklet, was taken away by one policeman namely Amuthan and she was asked to wait in the police station. Thereafter, the petitioner's child was forcibly taken away from the petitioner by a policeman and the Inspector of police sought sexual favour stating his wife is sick. Refusal by the petitioner, the said Inspector of Police threatened her with dire consequences. He forcibly removed her dresses with the active help of Sub-Inspector of Police Amuthan. As the petitioner was continuously resisting the same, the Inspector of Police brutally attacked her with stick and sexually abused her by force, In spite of informing about her menstruation. The petitioner

sustained bleeding injuries all over her body. A Doctor treated her in the police station and she was kept in custody there from 11.2.2012 to 13.2.2012. Her signatures and thumb impressions were obtained by Amathan by force as per the direction of Inspector of Police in blank papers and they registered petty case against her. They threatened the petitioner, if the sexual torture and sexual abuse done on her were revealed to others and she did not plead guilty, they would register Ganja and brothel case against her and her family members.

3. Meanwhile a case was foisted against her in Crime No.30 of 2012 under Section 394 read with 397 I.P.C. alleging that she snatched a chain from one Pushpam with knife point. She was remanded to judicial custody. The petitioner was not even permitted to speak to the learned Judicial Magistrate and the Nilakottai Women Prison denied admission after seeing petitioner's injuries caused by the police and thereafter she was taken to Nilakottai Government Hospital , Madurai Government Hospital, Dindigul Hospital and Trichy Government Hospital. Thereafter on 16.2.2012, she was lodged in Special Prison Trichy for Women.

4. While admitting in Special Prison, Trichy, the authorities recorded injuries that were caused by the policeman with lathies in Nilakottai Police station on 11.2.2012. The admission list also speaks about the injuries sustained by the petitioner. She further contended that the police officials prevented her from disclosing the atrocities during treatment in Nilakottai, Trichy and Madurai Government hospital. The petitioner was granted conditional bail. While complying with the bail conditions, the Inspector of police and Amathan threatened the petitioner not to disclose the sexual assault by the police in lock-up to anybody, failing which he would foist number of false cases against her and her family members and abused her with caste name, which is a schedule caste. Due to the above said threat, the petitioner did not prefer any complaint immediately.

5. The petitioner narrating her case gave a representation on 28.5.2012 to various authorities and no action was taken. Meanwhile the said officials threatened her. Unable to withstand the threats of the officials, the petitioner consumed Oleander seeds on 17.6.2012 and she was admitted in the hospital and took treatment till 22.6.2012. She renewed her request through representation on

10.7.2012.

6. As no action was taken on her complaints dated 28.5.2012 and 10.7.2012, the petitioner filed Crl.O.P.No.9725 of 2012 directing the 4th respondent namely DSB, CBCID to register a case based on the complaint dated 10.7.2012. This court by order dated 26.7.2012 directed the Superintendent of police Theni District, namely 5th respondent herein to look into the petitioner's complaint dated 16.7.2012 and enquire her and directed to take further action if prima-facie materials are available for cognizable offence against the proposed accused.

7. Thereafter, the petitioner submitted a representation dated 30.8.2012 to respondents 2 and 3 along with her representation dated 28.8.2012 enclosing a copy the order of the court dated 26.7.2012. She further contends that pursuant to the direction given by this Court no action was taken by the 5th respondent. Now the petitioner prayed this court seeking a direction to the third respondent to depute a woman police officer to register a FIR based on the petitioner's complaint dated 30.8.2012.

8. Counters have been filed by the respondents 5 and 7 denying the allegations. It is stated in paragraph 8 of the 6th respondent's counter that the petitioner's earlier complaint was enquired by Additional Superintendent of Police and he found that there is no truth in the petitioner's version. It is stated in para 6 of the counter affidavit that the alleged incident is said to have taken place on 12.2.2012 and the complaint was sent only on 10.7.2012 and that the petitioner did not make any single complaint against the police, before the learned Judicial Magistrate or Medical Officer or Special Jail authorities. It is contended in paragraph 7 that the petitioner was arrested by the 7th respondent in Crime No.30 of 2012 based on the complaint given by one Mrs.Pushpam, and remanded to Judicial custody. The case in Crime No.30 of 2012 is pending before the Andipatti Judicial Magistrate in PRC.No.8 of 2012.

9. It is contended by the 5th respondent in his counter that the order dated 10.7.2012 passed by this court was received only on 13.9.2012. Due to sensitive law and order bandobast duty, regarding vinayagar festival, protest by Musilim organisation, and investigation in a murder case of a SC community person, the

5th respondent was continuously engaged in Bandobust duty. Therefore, he could not immediately take up the matter. Due to paternity leave from 1.10.2012 to 15.10.2012, the enquiry could not be conducted immediately. He expressed his willingness to conduct enquiry within one month. Similar contention has been made by the 7th respondent.

10. Heard the parties and perused the records. The allegation is sexual assault that too in police custody. If the version is to be believed, really it would shake one's conscious. When such allegations are made, it is the bounden duty of the officials to conduct proper enquiry and proceed according to law. They cannot keep quite driving the alleged victim to approach the court. The petitioner gave complaint on 28.5.2012. No action was taken. Therefore, she again gave another representation on 10.7.2012. Thereafter, she filed Crl.O.P.No.9725 of 2012 and this court directed the respondents therein by order dated 26.7.2012 to enquire the matter and to take further action if prima facie materials are available to cognizance of the alleged offences. However, citing other duties, the 5th respondent contended that they could not immediately comply with the direction of this court.

11. Though it is contended in paragraph 8 of the 5th respondent's counter that based on the petitioner's complaint, ASP conducted enquiry and that the complaint was found to be false, closure report was not produced before this court. Assuming that the enquiry was conducted and the complaint was closed as false, the 5th respondent is duty bound to serve the closure report on the petitioner to enable her to work out her remedy. When serious allegations of sexual assault that too by the police officials, are made the police should have been more vigilant enough to send a copy of the closure report promptly to the petitioner. Failure to furnish closure report would only proves, due process of law was not followed. Even before this court, the alleged copy of the closure report is not produced. The respondents cannot wait for the petitioner to approach the court so that the respondent police would casually plead that the complaint, on enquiry was found to be false and was closed.

12. Whenever, the enquiry was conducted based on the complaint and after enquiry if it is closed, it is bounden duty of the police to serve a copy of the closure

report to the complainant so that the complainant can approach the Judicial Magistrate under Section 200 of Cr.P.C. for redressal. In this case even though the complaint was closed, no steps were taken by the respondent police to serve copy of the closure report and that itself is injustice done to the petitioner.

13. Though the earlier complaint dated 28.5.2012 was allegedly closed as false, it was not served. Only after giving another complaint dated 10.7.2012 the petitioner moved this court by way of Crl.O.P.No.9725 of 2012 for a direction to register the complaint. The said original petition was also disposed of by an order dated 26.7.2012 directing the 5th respondent/Superintendent of Police, Theni District to look into the complaint and to examine the petitioner in person and if sufficient materials is available, to proceed in accordance with law.

14. At the time of passing of the order dated 26.7.2012, it was brought to the notice of this court that the 5th respondent, Superintendent of police already gave a press note denying the rape charge. However, this court observed, the news report is not at all an embargo for the superintendent of police to conduct an enquiry. In spite of the press note given by the Superintendent of Police, this Court directed him to conduct an enquiry and he should have conducted an enquiry forthwith. However, the Superintendent of police stated that he could not conduct enquiry in time due to various personal reasons.

15. Learned counsel for the petitioner pointed out that it may not be fair for the Superintendent of police to conduct the enquiry. There is considerable force in the argument put forth by the learned counsel for the petitioner. When serious allegations of custodial rape has been alleged by a lady, she should not be under apprehension that the enquiry may not be conducted fairly by the Superintendent of Police. As the doubt will be always lingering in her minds based on the press note issued by the Superintendent of Police, the party should not have any fear or apprehension with regard to conduct of enquiry by the police authorities especially, petitioner's case is a custodial rape.

16. Though it has been stated in the counter affidavit that the petitioner did not state anything to the Medical Officer or Judicial Magistrate or Special Jail authority against the police about the assault, a perusal of the information obtained by the

petitioner from the jail authorities and hospitals under Rights to Information Act, would reveal that the petitioner categorically stated before the jail authorities, about the assault on her by the police. Special Jail Nilakottai record reads as follows: " Sl.No.26 O.P. No.4143 Date:

15. 2/2012 Time 1/10 p.m. Name and address: Vasantha w/o Periasami, Pattalamman Koil Street, Thenkarai. FRP 6309.Age 26 Sex Female." " Alleged to have assault by three police persons around 8.30 p.m. On 11.2.2012 at Kadamalaikundu police station with 1.Contusion present on left hand 4 x 4 c.m. 2.Tenderness left wrist 3.Tenderness sacral region" The Accident Register maintained by the Government Theni Medical College Hospital would denote that the petitioner was brought to the hospital as per the reference of the Superintendent of police. Since there is no female convict ward in Theni Medical College Government hospital the patient/petitioner was referred to government hospital Trichy for further treatment. Similarly the relevant portion of the report of the AGM government hospital, Trichy reads as follows: " Date of admission 15.2.2012 Date of discharge 16.2.2012 Assault with multiple injuries Alleged h/o injury due to assault....." "..... L/E Contusion over dorsum of left hand, left leg glutoal region....." The pro-forma for Health Scheme for Prisoners for admission in jail, Trichy given on 16.2.2012, reads as follows: " L/E assault by policemen with lathi in Nilakottai police station on 11.2.2011. She was taken to Nilakottai prison from where she was referred to Nilakottai government hospital was asked to betaken to Madurai government hospital. She was taken to Periakulam government hospital on 13.2.2012. Dindigul government hospital on 14.2.2012 admitted in Trichy government hospital on 15.2.2012 and discharged on 16.2.2012." " L/E 1.Swelling diffuse left hand 2.Diffuse contusion left shoulder back 3.Diffuse contusion extending upto left thigh 4.Contusion right knee joint 5.Difficult to sit 6.Reduction in left ear " The aforesaid government records obtained under Rights to the Information Act by the petitioner would undoubtedly prove that the petitioner sustained injuries and caused by the police assault, which were informed to the Medical authorities and jail authorities. That was the reason why, the Nillakottai Prison authority referred the petitioner to Nilakottai Government Hospital, then to Government Hospital Madurai and thereafter, AGM Government Hospital Trichy and Theni Government Medical College Hospital for treatment.

When the petitioner was arrested and remanded to judicial custody, the police is duty bound to explain under what circumstance the petitioner sustained serious injuries, requiring her to take treatment in various hospitals including taking treatment as inpatient. No material is produced by the police in this regard.

21. Assuming that the petitioner did not make any complaint to the Magistrate or Medical Officer about her assault and the injuries sustained, the police should explain the details of the circumstance under which the petitioner sustained injuries. There is ample evidence, as per the government records right from the date of her admission into Nilakottai jail on 13.2.2012 that she sustained injuries and was taking treatment.

22. The aforesaid circumstances would lead this Court to reach a conclusion that it may not be safe and proper to conduct an enquiry by the respondent police on the petitioner's complaint, as she categorically made accusation of custodial rape and assault by the police officials causing injuries on the petitioner in the custody. The grievous injuries sustained by the petitioner are very serious and other serious allegations made by the petitioner have to be necessarily looked into, and they cannot be ignored and enquired thoroughly. The Hon'ble Supreme Court in a judgement in State of Punjab vs. CBI and others reported in 2011 (9) SCC 18. declared that when serious allegations are made against the police officials and higher officials, it will be safe to entrust the matter to an independent agency for enquiry or investigation. In view of that independent agency is to be entrusted with the matter to look into the accusation of the petitioner, conduct enquiry and register FIR if cognizable offence is made out.

23. Therefore, the 5th respondent is directed to entrust the matter to the third respondent, CBCID, who shall depute a woman police official not below the rank of Deputy Superintendent of Police to look into the complaint, to conduct an enquiry and register FIR, if cognizable offence is made out and proceed in accordance with law at the earliest and to file a report before this court.

24. Petition is ordered. No costs. Consequently the connected M.P.Nos.1 and 2 of 2012 are closed. gsr/vk To 1. The Home Secretary, Government of Tamil Nadu, Home Department, Fort St.George, Secretariat, Chennai-9.

2. The Director General of Police, Office of the Director General of Police, Beach Road, Chennai-2.
3. The Additional Director General of Police, CBCID, Office of the Additional Director General of Police, CBCID, Chennai-2.
4. The Deputy Superintendent of Police, CBCID, Visalatchipuram 2nd Street, Madurai-14.
5. The Superintendent of Police, Theni District.
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7. The Inspector of Police, Kadamalai Kundu Police Station, Theni District.

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