

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30/08/2002

Coram

The Hon'ble Mr. Justice P. SATHASIVAM

Writ Petition No. 15449 of 1992

and

W.M.P.No. 21980 of 1992

Arumugham Petitioner

-Vs-

1. State represented by the
Inspector General of Police (Crime),
Madras-600 004.

2. The Superintendent of Police,
Salem.

3. The Additional Superintendent of
Police, Salem.

4. Sengodan,
Deputy Supdt., of Police, Salem.

5. Inspector of Police,
Vigilance and Anti Corruption,
Salem.

6. The Inspector of Police,
CBCID., Salem.

7. Kothandan,
Inspector of Police,
Athur.

8. Ganesan,
Sub Inspector of Police,
Rasipuram.

9. Judicial Magistrate-No.I,
Athur.

10. P. Jayamani.
(Respondent No.10 was impleaded
as per Order of Court dated 25-4-94). Respondents.

Petition under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus as stated therein.

For petitioner: Mr. M. Balasubramanian.

For respondents: Mr. K. Muralidharan,
Government Advocate for respondents 1 to 6.

Mr. P. Jagadeesan for R-10.

Mr. V.N. Mohanraj for R-7.

Mr. R. Asokan for R-8.

:ORDER

The prayer in the Writ Petition is as follows:

"To issue a Writ of Certiorarified Mandamus or any other writ, order or directions in the nature of a Writ to call for the records in C.C.No. 255 of 1991 on the file of the Judicial Magistrate No.I, Athur, dated 30-01-92 and quash the same besides directing the first respondent herein to file a final report on the complaint given by the petitioner on 6-9-91, 7-9-91 and 13-11-91 based on the findings of respondents 4 to 6 and to have the properties seized in C.C.No. 2 55 of 1991 transferred to that Court to which such report is to be filed for disposal according to law."

2. The case of the petitioner is briefly stated hereunder: According to him, on 30-8-91, a police constable attached to Rasipuram Police Station came to his residence at Namagiripettai and informed that Sub Inspector of Police (Crimes) wanted him to go over to the Station. He accompanied the constable to Rasipuram Police Station. The Sub Inspector of Police, Mr. Ganesan, took him in a Metador van, TSE 2073 to Moolapallipatti and went to his father-in-law, K. Duraiswamy's house, brought him out and forced him to get into the said van, the Sub Inspector (Crimes) showed an unidentifiable and unknown person and threatened them that they have received jewels from the said unidentifiable person. When they denied the false statement, they were threatened with dire consequences, and so saying the Sub Inspector of Police trespassed into his house at Moolapallipatti without any authority of law, and snatched away jewels weighing about 5 sovereigns then worn by his children. Thereafter, the petitioner and his father-in-law were taken to Rasipuram Police Station and the Sub Inspector of Police started man-handling and torturing them and compelled them to accept as though they have received stolen jewels from the said unidentifiable person and detained them in illegal custody on the night of 30-8-91 at the Rasipuram Police Station. On 31-8-91 morning he asked the petitioner to part with another 2 sovereigns of jewels. Again the Sub Inspector of Police went and enquired them in the solitary cell where the petitioner and his father-in-law were detained, without any authority of law at 9 a.m. on 31-8-91 and shocked them by saying that the said unidentifiable personal had stated to him that he had given another 5

sovereigns of jewels to them and therefore, unless they part with 7 more sovereigns of jewels, they would not be allowed to go out. They have expressed their inability and impossibility to part with any further jewels. Due to unbearable of the tortures inflicted on them and the repeated threatening resistance, the petitioner had to accept his illegal demand of making cash payment of Rs.41,700/-. His wife raised the said fund by pledging 13 numbers of Indira Vikas Bonds which stood in the name of his father-in-law from one Natarajan, Vallakalpatti, the total face value of which being Rs.22,000 /-. He has raised a loan of Rs.15,000/- from the said R. Natarajan against its face value of Rs.22,000/-. By making other arrangements, he gave a total sum of Rs.36,700/- to the said Ganesan, Sub Inspector of Police. He also demanded another sum of Rs.3000/- as mamool for him and Rs.250/- for the constables from the said Rs.36,700/- paid by them. Only at 9 p.m. on 1-9-91 the Sub Inspector of Police came to their cell and released them with severe warnings and serious consequences if they reveal about their illegal detention in their custody. Thereafter, he met the Deputy Superintendent of Police and told him that he has given Rs.36,700/- to the Sub Inspector of Police out of Rs.41,700/- and Rs.5000/- was due to him. Since the Deputy Superintendent of police did not take any action, he gave a petition to Mr. Hariharan, Inspector General of Police (Crimes), Madras on 6-9-91. On coming to know his petition to the higher authorities, the said Ganesan, Sub Inspector of Police trespassed into his house and snatched away 'Thali' chain worn by his sister weighing about 5 sovereigns and he informed his wife that he (petitioner) could pay the further amount of Rs.5000/- and collect back the said jewel. Again he preferred another complaint with the Inspector General of Police (Crimes), Madras in person on 7-9-91 informing about the snatching away of jewels of 5 sovereigns belonged to his sister. The Inspector General of Police (Crimes) Madras assured him that he would inquire into the episode thoroughly. The petitioner was taken by the Sub Inspector of Police (Crimes), Rasipuram to the residence of one Thangavel Asari of Namagiripettai who is a gold smith by profession. Due to torture and mental agony caused by the said Sub Inspector of Police, his father-in-law got himself admitted in the Government Hospital, Mettur from 10-9-91 to 22-9-91. The Sub Inspector of Police, Rasipuram made his relative one Jayamani to prefer a complaint at Athur Police Station on 19-9-91 as though she lost her jewels while she was in the hospital. He caused to register a case in Cr.No. 764/91 showing one Thangaraj alias Kanvali as the accused, who is the close relative of one constable, Jayakumar of Namagiri Police Station alleging that he sold them to his father-in-law for a paltry sum of Rs.10,000/- and out of which Rs.2,00 0/- was received by the accused Thangaraj and the balance of Rs.8,000 /- would be accepted to be paid after the said jewels are sold through Thangavel Asari, Namagiripettai and for that purpose they allege that the jewels were handed over to the said Thangavel Asari and that in the absence of the said Asari, the said jewels were recovered from his wife, Tmt. Amudham, on being identified by his father-in-law-K. Duraiswamy, on 20-9-91 and deposited the same in the Court of Judicial Magistrate No.1, Athur, on 20-9-91.

3. It is further stated that the Sub Inspector of Police (Crimes), Athur at the instigation and inducement of the said Ganesan hastened to make the accused, Thangaraj alias Kanvali to putforth a voluntary plea of guilty before the learned Judicial Magistrate No.I, Athur so that immediately after the case

is over, all the jewels could be handed over to Jayamanai, P.W.1, in C.C.No. 255/91, a close relative of the Sub Inspector, Ganesan, as he originally planned. At this stage, on 9-1-92, his father-in-law filed Crl.M.P.No. 90/92 before the said Magistrate bringing out the aforesaid facts to the notice of the learned Magistrate and under such circumstances not to accept the so called voluntary plea of guilty which would not be so in the actual sense but for the case set up by the police. But, the learned Magistrate has not accepted his father-in-law's request and dismissed the application. During the pendency of the trial of the above case, he has filed a petition on 31-10-91, in Crl.M.P.No. 3757/91 before the learned Judicial Magistrate No.1, Athur for the return of the said jewels seized in C.C.No. 255/91. The same is still pending. At the instance of the Sub Inspector of Police-Ganesan, Jayamani, P.W.1, in C.C.No. 255/91 to file a similar petition in Crl.M.P.No. 3759/91 claiming return of jewels seized in this case. The same is also pending before the same Magistrate. Meanwhile, on 30-1-92, the learned Judicial Magistrate No.1, Athur, after accepting the purposeful voluntary plea of guilty of the accused, Kanvili alias Thangaraj, sentenced him to undergo 18 months rigorous imprisonment. But the Magistrate had stated in the said order that order regarding return of properties seized in that case would be passed separately after conducting enquiry into the Crl.M.P.No. 3757 and 3759/91 filed by him and Jayamani respectively. The complaint filed by him on 6-9-91, 7-9-91 and 13-11-91 against the said Ganesan, Sub Inspector of Police, Rasipuram, comprised of the commission of offences of "public servant taking gratification other than legal remuneration in respect of an official act; fabricating false evidence", public servant in judicial proceeding corruptly making report etc., contrary to law, using evidence known to be false, giving false information respecting an offence committed, dishonestly making false claim in Court, using criminal force, extortion, criminal trespass, criminal intimidation, punishable under various sections and the respondent police are statutorily required to take cognizance of his complaints dated 6-9-91, 7-9-91 and 13-11-91 and file a final report before the competent court for launching appropriate proceedings against the said Ganesan, Sub Inspector of Police and his subordinates. The finality of the factum in issue viz., the return of jewels seized in C.C.No. 255/91 could be decided only after the filing of final report by the first respondent. Such report had not yet been filed before the lower court and the non-registration of complaints filed by the petitioner on 6-9-91, 7-9-91 and 13-11-91 deprives his fundamental rights, personal liberty, right to possess his own properties etc., guaranteed under Articles 14, 19 and 21 of the Constitution of India; hence the present Writ Petition for appropriate direction.

4. 8th respondent-Ganesan, Sub Inspector of police, Rasipuram, has filed a counter affidavit wherein he admitted that he was working as Sub Inspector of Police, Rasipuram during 1991-92 and denied all allegations made against him by the petitioner. He denied the allegation that he trespassed into the house of the petitioner, snatched a chain from his child, took him to the police station and tortured him to admit receipt of stolen property from some unidentifiable person. He came to know about the petitioner and his father-in-law only when they came to know of the arrest of the accused Kanvili alias Thangaraj who was wanted by the Rasipuram Police in connection with the cases pending on their file. The said Kanvili @ Thangaraj was convicted by

the Judicial Magistrate's Court, Athur and that the proceeding with regard to the claim for return of the jewels are pending before the Court. He reiterated that he has nothing to do with the alleged jewels which appear to be the main cause for this writ petition and there was no such incident as stated by the petitioner on 30-9-91 and there is no truth in the allegations made by the petitioner. He was transferred from Rasipuram during February, 1992 and he had been dragged in this matter by the petitioner with ulterior motive. The petitioner has invoked the extra-ordinary jurisdiction of this Court to some how claim for the jewels under the custody of the Judicial Magistrate's Court, Athur.

5. 10th respondent-P. Jayamani has filed a separate counter affidavit wherein it is stated that the order of the Judicial Magistrate-No.I, Attur dated 30-1-92 passed in C.C.No. 255/91 is in order and there is no error of law or jurisdiction for interference by this Court. In any event, against the said order effective alternative remedies are available under the Code of Criminal Procedure; hence the present writ petition is not maintainable. It is stated that she had lost 18 sovereigns of gold jewels on the night of 16/17-9-91 while she was admitted as an in-patient in Manimekalai Hospital, Attur. She gave a complaint before the 8th respondent which was registered in Crime No. 764/91 under Section 380 IPC. The 8th respondent has filed charge sheet against Thangaraj alias Kanvali Thangaraj before the learned Judicial Magistrate, No.I, Attur in C.C.No. 255/91. The jewels were also recovered. Both the petitioner and the 10th respondent filed separate petition before the learned Magistrate claiming right over the jewels. The learned Magistrate, after convicting the accused, has observed that order regarding the case property, namely, jewels will be passed by way of separate enquiry in CrI.M.P.Nos. 3757 and 3 759 of 1991. She is the owner of the jewels in question and the petitioner has no right to claim ownership of the jewels. There is absolutely no merit in the writ petition and the same is liable to be dismissed with costs.

6. In the light of the above pleadings, I have heard the learned counsel for the petitioner as well as respondents.

7. Mr. M. Balasubramanian, learned counsel for the petitioner, after narrating the details regarding the arrest of both the petitioner and his father-in-law, the conduct of the 8th respondent in snatching away the jewels from their custody, their arrest and detention in prison, subsequent complaint to the higher authorities and the impugned order of the Judicial Magistrate-No.I, Attur in C.C.No. 255/91 dated 30-1-92 as well as the report of enquiry submitted by the Special Investigating Officer, would contend that it is a fit case in which the impugned order is to be quashed and prayed for direction to the first respondent to file a final report on the complaint given by the petitioner on 6-9-91, 7-9-91 and 13-9-91. On the other hand, learned counsel appearing for the respondents, particularly M/s. V.N. Mohan Raj, R. Asokan and P. Jagadeesan, learned counsel for respondents 7, 8 and 10 respectively, would contend that the writ petition itself is not maintainable in view of the fact that against the order in C.C.No. 255/91 on the file of Judicial Magistrate-No.I, Attur, there are effective alternative remedies available under the Criminal Procedure Code, and in such a situation,

interference of this Court is not called for in this writ petition. As regards the report of the enquiry officer, appointed by this Court, it is stated that in the light of several discrepancies and infirmities existed in this case, the report cannot be relied upon and no direction need be issued as suggested by the Special Investigating Officer.

8. I have carefully considered the rival submissions.

9. Before considering the contentions, it is to be noted that petitioner has prayed for quashing of the order dated 30-01-92 in C.C.No. 255/91 on the file of the Judicial Magistrate-No.I, Attur. In the later part of the prayer, he has prayed for a direction to the first respondent-Inspector General of Police (Crimes), Madras-4 to file a final report on the complaint given by him on 6-9-91, 7-9-91 and 13-11-91 which was based on the findings of respondents 4 to 6 and to have the properties seized in C.C.No. 255 of 1991 transferred to the said Court to which such report is to be filed for disposal. The Criminal Case, viz., C.C.255/91 of Judicial Magistrate's Court-No.I, Attur pertains to theft of jewels belonging to P. Jayamani in Manimekalai Hospital, Athur by the accused Thangaraj alias Kanvali Thangaraj, who was convicted of the offence under Section 380 of the Indian Penal Code and sentenced to undergo Rigorous Imprisonment for 18 months. It is seen from the materials placed and according to the petitioner, at the instance of respondents 7 and 8, the petitioner and his father-in-law K. Duraisamy were tortured and they were forcibly parted with gold sovereigns and because of the coercion and threat inflicted on them, they paid a total sum of Rs.36,700/-. It is also their case that at the instance of the 8th respondent and in order to hand over the jewels to his (8th respondent) relative-P. Jayamani, they were arrested and forced to part with jewels and money, hence, according to them, while quashing C.C.No.255/91, appropriate action may be taken against the respondents, particularly respondents 7 and 8. In the light of the contention raised, I have carefully perused the impugned proceedings which is nothing but an order passed by the Judicial Magistrate-No.I, Attur in C.C.255/91. On the basis of the complaint made by one P. Jayamani, 10th respondent herein, namely, that she had lost 18 sovereign of gold jewels on the night of 16/17-9-91 while she was admitted as an in-patient in Manimekalai Hospital at Attur, the 8th respondent herein registered a case in Crime No. 764/91 of Rasipuram Police Station under Section 380 IPC. It is further seen that after investigation, the 8th respondent has filed a charge sheet against one Thangaraj @ Kanvali Thangaraj before the Judicial Magistrate-No.I, Attur which was taken on file as C.C.No.255 of 91. It is further seen that jewels were also recovered in connection with that case. It is also seen that in the same Calendar Case the petitioner has filed Crl.M.P.No. 3757 of 91 stating that the jewels which were recovered from the petitioner's father-in-law Duraisamy belong to him, and that the same may be returned to him. The impleaded 10th respondent-P. Jayamani also filed another petition in Crl.M.P.No. 3759/91 in the same case claiming the jewels as her property. On the basis of voluntary admission of guilt, the learned Magistrate on 30-1-92 convicted the accused Thangaraj alias Kanvali Thangaraj for the offence under Section 380 read with 75 I.P.C. and sentenced him to undergo rigorous imprisonment for 18 months. The learned Magistrate has also stated in the same order that with regard to

disposal of the case property, namely, return of jewels, separate orders will be passed after conducting an enquiry on the petitions in Crl.M.P.Nos. 3757 and 3759 of 91 filed by the petitioner and the said P. Jayamani (10th respondent). It is brought to my notice that at this stage, the petitioner has filed Crl.O.P.No. 8655/92 before the Criminal Side of this Court without impleading the said P. Jayamani, 10th respondent herein, and also obtained an interim stay in Crl.M.P.No. 4738 of 92 by which the proceedings in Crl.M.P.Nos. 3757 and 3759 of 91 on the file of the Judicial Magistrate-No.I, Attur have been stayed. It is seen that subsequently the 10th respondent has filed Crl.M.P.No. 7171 of 92 before this Court for impleading her and the same was ordered on 28-10-92. It is further seen that the 10th respondent has also filed a petition in Crl.M.P.No. 7709 of 92 to vacate the stay granted in Crl.M.P.No. 4738 /92. When the vacate stay petition came up for hearing before this Court on 17-11-92, the counsel for the petitioner withdrew Crl.O.P.No. 8655/92. From the above facts, it is clear that even though the criminal case, namely, C.C.No.255/91 was disposed of, the two petitions, namely, Crl.M.P.Nos. 3757 and 3759/91 filed by the petitioner and the 10th respondent respectively are still pending before the learned Judicial Magistrate-No.I, Attur. First of all, it is not demonstrated or highlighted how C.C.No.255/91 of the Judicial Magistrate's Court-No.I, Attur is to be quashed by this Court by exercising the extraordinary jurisdiction under Article 226 of the Constitution of India. I have already stated that the said case came to be filed on the basis of the complaint given by the 10th respondent that she had lost 18 sovereigns of gold jewels on 16/17-9-91 while she was taking treatment as in-patient in Manimekalai Hospital, Attur. The accused, namely, Thangaraj @ Kanvali Thangaraj admitted the offence and pleaded guilty, and the learned Magistrate, after accepting his plea of guilt which was made voluntarily, convicted and sentenced him to undergo rigorous imprisonment for 18 months. In such a situation, the person, who is aggrieved by the conviction and sentence and who is to go on appeal, is the accused Thangaraj @ Kanvali Thangaraj. It is stated that he had not preferred appeal against the said conviction and sentence. In such a circumstance, as observed earlier, the said proceedings cannot be questioned in a Writ proceedings before this Court, that too by the petitioner. On this ground, the Writ Petition is liable to be dismissed.

10. Coming to the relief prayed for by way of Mandamus, it is true that the petitioner has alleged in his affidavit that he was ill-treated by the 7th and 8th respondents. He has also highlighted how himself and his father-in-law were arrested, and how they were coerced and threatened to part with the jewels and pay money. Based on his specific averments, this Court, by order dated 3-8-2001, appointed the Deputy Superintendent of Police, Crime Branch C.I.D., Metro Wing, Chennai-2 as the Special Investigating Officer to investigate the allegations made by him and to submit a report within a period of 12 weeks from the date of the said order. Pursuant to the said order, the Special Investigating Officer, after conducting enquiry, submitted a report on 25-9-2001. After enquiring nearly 30 persons regarding the allegations made in the writ petition, the Special Investigating Officer has concluded that K.R. Ganesan, formerly Sub Inspector of Police, Rasipuram Police Station, 8th respondent herein, has illegally obtained cash and jewels from the petitioner and his relatives, made jewels with the active connivance of N. Thangavel

Asari by deviating the procedures and law to show recovery in the above theft case. He also held that G. Kothandam, formerly Inspector of Police, Athur Police Station has obtained the accused and properties handed over by the said K.R. Ganesan, fabricated documents, filed the final report in Crime No. 764/91 of Athur Police Station without proper investigation. On receipt of the copy of the said report, respondents 7, 8 and 10 filed separate objections to the report of the Special Investigating Officer. Though the learned counsel for the petitioner has elaborately argued for getting a direction from this Court, after going through the said report, and the consequential objection raised by respondents 7,8 and 10, making counter allegations against the petitioner and others, I am of the view that based on the information in the form of affidavit and counter affidavit, no direction can be issued as claimed by the petitioner, more particularly in the light of certain infirmities in the enquiry report as pointed out by respondents 7,8 and 10. It is settled law that on the basis of disputed questions of facts any finding can be arrived by this Court. Further, the alleged incident in this case had taken place in 1991. In such a situation, I am of the view that after a lapse of eleven years, no action or direction can be taken/issued, particularly in the light of the specific denial by the contesting respondents.

11. The other grievance of the petitioner is that the jewels seized by the 8th respondent belong to him. In this regard, as stated earlier, both the petitioner and the 10th respondent have filed separate petitions in Crl.M.P.Nos. 3757 and 3759 of 91 before the Judicial Magistrate, No.I, Athur claiming right over the same. I have also referred to the fact that while disposing off C.C.No.255 of 91 on 30-1-92, the learned Magistrate has observed that the case property, namely, jewels will be disposed of after conducting enquiry in Crl.M.P.Nos. 3757 and 3759/91. At the time of hearing of the writ petition, it is stated that even now both the Crl.Misc., Petitions are pending before the learned Magistrate. If the above statement of facts are correct, it is for the petitioner and the 10th respondent to pursue their respective petitions in that Court; and this Court hopes that appropriate orders will be passed on merits. When such a remedy is available, the direction prayed for in the form of mandamus also cannot be issued. It is also relevant to note that based on the complaint of the 10th respondent, the 7th respondent recovered the stolen properties from Thangavel Achari of Namagiripettai and arrested the accused-Thangaraj alias Kanvali Thangaraj and filed the charge sheet on 29-9-91. It is further seen that the final report in the above case was filed by the 7th respondent before the Judicial Magistrate No. I, Athur on 29-9-91 and the same was taken on file as C.C.No. 255/91. While questioning the accused Thangaraj @ Kanvali Thangaraj, he voluntarily pleaded guilty of the offence with which he was charged and he was convicted and sentenced to 18 months' Rigorous Imprisonment on 30-1-92 by the Judicial Magistrate-No.I, Athur. The 7th respondent has also filed a final report before the Judicial Magistrate-No.I, Athur in that case. In the light of the above factual information and in view of the fact that the petition filed by the petitioner and the 10th respondent claiming ownership over the case property, namely, jewels are pending, it is for them to pursue their respective petition before the learned Magistrate. In view of the pendency of Crl.M.P. Nos. 3757 and 3759/91, I do not find any valid ground either to quash C.C.No.255/91 on the file of the Judicial Magistrate-No.I, Athur or

issue further direction as claimed by the petitioner. The petitioner is at liberty to pursue his petition before the learned Judicial Magistrate-No.I, Athur with regard to his claim for case property i.e., jewels. With this observation, the Writ Petition is dismissed. No costs. Consequently, W.M.P.No. 21980 of 92 is closed.

Index:- Yes

Internet:- Yes

R.B.

To:-

1. The Inspector General of Police (Crime),
Madras-600 004.

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Salem.

3. The Additional Superintendent of
Police, Salem.

4. Sengodan,
Deputy Supdt., of Police, Salem.

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9. Judicial Magistrate-No.I,
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P. SATHASIVAM, J.

Order in W.P.No.15449/92
and W.M.P.No.21980/92

