

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

FRIDAY, THE 21ST DAY OF JUNE 2024 / 31ST JYAISHTA, 1946

WP(C) NO. 37943 OF 2018

PETITIONER:

SHALET
AGED 38 YEARS, W/O ALEX GILD,
JOLLY ARCADE, THEKKUMBHAGOM, ERVIPURAM PO, KOLLAM.

BY ADVS.

V. JAYAPRADEEP
ANN SUSAN GEORGE
O.A.NURIYA
D.S.LOKANATHAN
ALAN PRIYADARSHI DEV
ANISHA EMERSON

RESPONDENTS:

- 1 THE STATE OF KERALA
REPRESENTED BY ITS SECRETARY,
HOME DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.
- 2 THE STATE POLICE CHIEF
HEADQUARTERS, THYCAUD, THIRUVANANTHAPURAM.
- 3 THE DISTRICT Police CHIEF
KOLLAM- 691 001.
- 4 MR.PANKAJAKSHAN
S.H.O., ERAVIPURAM POLICE STATION, KOLLAM - 691 011.
- 5 MR.JOYKUTTY
ADDITIONAL SI, ERAVIPURAM POLICE STATION,
KOLLAM - 691 011.
- *6 SIVAKUMAR
SUB INSPECTOR, ERAVIPURAM POLICE STATION,
KOLLAM - 691 011.

*(THE 6TH RESPONDENT IS DELETED FROM PARTY ARRAY AT THE RISK OF PETITIONERS AS PER THE ORDER DATED 10.7.2019 IN IA. 01/2019)

- 7 **B.VINOD**
 ASI, ERAVIPURAM POLICE STATION, KOLLAM - 691 011.
- 8 **ZAKKIR HUSSAIN**
 ASI, ERAVIPURAM POLICE STATION, KOLLAM - 691 011.
- 9 **RAJESH**
 PRO, ERAVIPURAM POLICE STATION, KOLLAM - 691 011.

BY ADVS.

MANSOOR.B.H. (FOR RESPONDENTS 4,5 & 7 TO 9)
THUSHARA JAMES (SR GP)

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 21.06.2024, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:**

J U D G M E N T

The petitioner, who claims to be a tuition teacher by profession, has approached this Court seeking a writ of *mandamus* commanding respondent Nos. 4 to 9 to refrain from harassing the petitioner or members of her family; for a writ of *mandamus* commanding respondent Nos. 2 and 3 to register criminal cases against respondent Nos. 4 to 9; and for a writ of *mandamus* commanding respondent Nos. 1 to 9 to pay an amount of Rs.10,00,000/- to the petitioner as compensation for the illegal arrest and detention of the petitioner by respondent Nos. 4 to 9.

2. The brief facts of the case are as follows: the petitioner and her husband are accused in Crime No.573 of 2018 of Eravipuram Police Station, Kollam district alleging commission of offences under Sections 420, 468 and 471 r/w Section 34 of the Indian Penal Code. The allegation, in brief, is that the husband of the petitioner

had obtained amounts from the *de facto* complainant and several others promising to secure for them a job in Israel, and after taking the *de facto* complainant and others to Jordan on the promise that they would be taken to Israel from Jordan, they were brought back to India without offering any job as promised. It is alleged that thereafter, the husband of the petitioner took the *de facto* complainant and others to Egypt, again promising that they would gain entry to Israel, and according to the *de facto* complainant, they were again brought back to India without obtaining for them any job as promised in Israel.

3. According to the petitioner, the allegations in the First Information Statement leading to registration of Crime No.573 of 2018 indicate that there were absolutely no allegations against the petitioner. But, however, she was arrayed as an accused in this case only to pressurize her husband, who is the other accused in the case. The petitioner secured anticipatory bail from this Court in Crime No.573 of 2018 of Eravipuram Police

Station. Ext.P2 is the order dated 29-08-2018 in B.A.No.5503 of 2018 granting anticipatory bail to the petitioner. While matters stood thus, on 16-11-2018, certain Police officials attached to the Eravipuram Police Station reached the residential house of the petitioner and allegedly entered into the house, after breaking open the door, and forcefully caught hold of the petitioner, outraged her modesty and pushed her into a Police jeep in front of her small children, using obscene and filthy language. It is also urged that the Police officials also stated that whatever the High Court or the Magistrate Court say, they will deal with cheats and fraudsters in any manner they like and punishment will also be as decided by them. It is alleged that when the neighbours asked the Police officials as to why the petitioner was being arrested, they were informed that if an amount of Rs.5,00,000/- is given to one Nancy, the petitioner would be released from custody. According to the petitioner, after taking her to the Police Station, she was again abused using filthy language and threatened to pay a

sum of Rs.5,00,000/- to the aforesaid Nancy. The learned counsel for the petitioner relies on Ext.P3 newspaper report dated 17-11-2018 to contend that the so called drama of the arrest of the petitioner was later projected as a case of mistaken identity, and after detaining the petitioner in the Police Station till late in the evening, the petitioner was left free to go back to her house. The learned counsel for the petitioner states that the Police officials of the Eravipuram Police Station and in particular the Assistant Sub Inspector of Police attached to that Police Station at the relevant time had an axe to grind against the husband of the petitioner. It is submitted with reference to the pleadings in W.P(C)No.37828 of 2018, which was a petition filed by the petitioner along with her husband for Police protection, that it is clear from the pleadings in that writ petition, as also from the judgment in that writ petition, and also from the contempt of court proceedings initiated alleging violation of the directions issued by this Court in the judgment in W.P(C)No.37828 of 2018 that,

the petitioner was picked up from her house for no reason and only with an intent to harass the petitioner. It is pointed out that from a reading of the counter affidavit filed by respondent Nos. 4, 5 and 7 to 9 and the statement filed by the learned Government Pleader there was absolutely no justification for arresting/detaining the petitioner in the Police Station from the morning on 16-11-2018 till late evening on the same day. It is submitted that the petitioner was released only after the local people created hue and cry regarding the illegal detention of the petitioner.

4. The learned Government Pleader refers to the statement dated 04-12-2018 to contend that there was no illegal arrest/detention as alleged by the petitioner. It is submitted that the petitioner was not even arrested on 16-11-2018. It is submitted that a Non-Bailable Warrant had been issued by the Judicial First Class Magistrate Court-I, Kollam, in S.T No.7738 of 2015. It is submitted that the said Non-Bailable Warrant is on record as Annexure-R3(a) along with the statement. It is pointed

out that a glance at the address shown in Ext.R3(a) will show that the address shown therein is almost identical to the address furnished by the petitioner while filing B.A.No.5503 of 2018. It is submitted that after the petitioner had been taken to the Police Station, she stated that she had nothing to do with the person against whom the Non-Bailable Warrant was issued and that the petitioner could not be detained in connection with S.T No.7738 of 2015. It is stated that, thereafter, the matter was verified with the court and when it came to the knowledge of the officials that the petitioner was not the person against whom the Non-Bailable Warrant had been issued, she was immediately let off. It is stated that the allegation of harassment, use of vulgar words etc. is nothing but a figment of the imagination of the petitioner. It is submitted that the petitioner had voluntarily come with the Police officials to the Police Station and there was no occasion for the Police officials to break open her door and drag her out and put her into the Police jeep as stated in the writ petition. It is

submitted that there is no ground for the award of any compensation, as respondent Nos. 4, 5 and 7 to 9 were acting in the discharge of official duties.

5. The learned counsel appearing for respondent Nos. 4, 5 and 7 to 9 would submit that the allegation that the then Assistant Sub Inspector of Police attached to the Eravipuram Police Station had an axe to grind against the husband of the petitioner is absolutely wrong. It is submitted that the Non-Bailable Warrant (Ext-R3(a)) had been issued by the Judicial First Class Magistrate Court-I, Kollam, initially on 14-08-2017, thereafter on 13-02-2018, again on 17-08-2018 and further on 16-11-2018. It is submitted that Ext.R3(a) is the warrant issued on 17-08-2018 directing the production of the person named therein on 16-11-2018. It is submitted that, on seeing the address in Ext.R3(a) and considering that there are some criminal antecedents insofar as the petitioner is concerned, the petitioner was picked up from her house at about 8.30 A.M on 16-11-2018. It is submitted that when the petitioner took up the contention that she has nothing to

do with the case pending before the Judicial First Class Magistrate Court-I, Kollam, and in respect of which Ext.R3(a) Non-Bailable Warrant had been issued, the matter was verified in the manner set out in the counter affidavit filed by respondent Nos. 4, 5 and 7 to 9 and thereafter the petitioner was immediately released. It is submitted that the allegation that the petitioner was released only by the evening of 16-11-2018 is not correct and the petitioner was actually released at about 11.30 A.M on 16-11-2018.

6. The learned counsel for the petitioner relied on the judgment of a Division Bench of this Court in ***Vipin P.V. v. State of Kerala; 2013 (1) KHC 267***, as also on the judgment of another Division Bench of this Court in ***State of Kerala and Others v. Shyam Balakrishnan; 2019 (3) KLT 669***, to contend that, where it is clearly established that, for extraneous reasons and considerations, the life and liberty of a citizen has been interfered with, then the citizen is

entitled to be compensated for the pain and suffering of a false accusation and consequent detention. It is submitted that there is nothing on record to show that the fact of the petitioner being brought to the Police Station and thereafter released has been recorded properly in the General Diary or in any other record maintained at the Police Station. It is submitted that since it is clear that the petitioner had been wrongly arrested and taken to the Police Station, the petitioner is entitled to the payment of the compensation as sought for in the writ petition.

7. Having heard the learned counsel appearing for the petitioner, the learned Government Pleader appearing for the official respondents and the learned counsel appearing for respondent Nos. 4, 5 and 7 to 9, I am of the view that the petitioner has not made out any case for grant of the reliefs sought for in the writ petition. It is no doubt true that in appropriate cases, where this Court is convinced that there has been a gross violation of human rights by illegally detaining a

person, it may be open to this Court to grant compensation even in the exercise of writ jurisdiction. However, I am of the view that it must be demonstrably evident from the facts that the action of the Police authorities was nothing but an abuse of the law and in a violation of the fundamental rights of the citizen. I am unable to hold that this is a case where respondent Nos. 4, 5 and 7 to 9 had acted in a planned manner to deprive the petitioner of her liberty in order to harass her. In the facts of the present case, the action by respondent Nos. 4, 5 and 7 to 9 was in the execution of a warrant issued by the Judicial First Class Magistrate Court-I, Kollam. The address of the petitioner shown in Ext.P2 bail application is as follows:

*“Shalet, Aged 40 years, W/o. Alex Herman Gild,
Jolly Arcade, Puthanazhikam Purayidam,
Thekkumbhagam, Eravipuram P.O., Kollam”.*

The address of the accused against whom the Non-Bailable Warrant was issued as can be seen from

Ext.R3(a) produced along with the statement filed by the learned Government Pleader is as follows:

“Sharlet, Puthanazhikom, Purayidom, Near Convent, Eravipuram P.O., Kollam”.

According to the statement filed by the official respondents (other than respondent Nos. 4, 5 and 7 to 9) and the counter affidavit filed by respondent Nos. 4, 5 and 7 to 9, it appears that according to them, they had genuinely believed that the petitioner was the person mentioned in Ext.R3(a) Non-Bailable Warrant and have therefore brought her to the Police station for the purpose of production before the court which issued Ext.R3(a). While the learned counsel appearing for the petitioner may be right in pointing out from the case history of S.T. No.7738/2015 that, on 16-11-2018 (which was the date for production of the accused named in the Non-Bailable Warrant) the petitioner was never taken to the court, it is clear from the statement filed by the official respondents and also from the counter affidavit filed by respondent Nos. 4, 5 and 7 to 9 that this was on

account of the fact that the petitioner had informed the Police that she had nothing to do with the case in respect of which Ext.R3(a) warrant had been issued. In the statement filed on behalf of the official respondents, it is stated as follows:-

*“6. The Hon'ble Judicial First Class Magistrate Court Kollam has Issued Non Bailable Warrant in ST No.7738/2015 against Sharlet. Puthenazhikam Purayidom, Near Covent, Eravipuram, Kollam. True photo copy of the warrant issued by the Hon'ble Judicial First Class Magistrate Court, Kollam is produced herewith and marked as **Annexure -R3(a)**. On receipt of the warrant issued by the Hon'ble Judicial First Class Magistrate Court Kollam for executing the warrant, Joykutty GSI of Eravipuram Police Station, Sivakumar C.P.O 6543, SCPO 6361 Rajesh Kumar and WSCPO 5378 Jayakumari, WSCPO 5575 Bindhu proceeded to the house of the petitioner at 08.30 A.M on 16.11.2018. The police party informed her that Learned Magistrate issued a warrant. She came along with the party to the police station. When she reached police station she said that she is not the actual person involved in the particular case pending before Hon'ble Magistrate Court-1 Kollam. On verification with the counsel who appeared in the*

particular case it is understood that the petitioner is not the person implicated as accused in the particular case in which the Learned Magistrate had issued warrant. On getting information the petitioner was not arrested and she left the police station.

7. It is respectfully submitted that the petitioner has suppressed the fact that two WSCPO's were there when she was taken to the police station. Filthy allegations of physical contact and attempt to outrage the modesty are alleged without any bonafides.

8. After bringing her to the Eravipuram Police Station details were crosschecked before recording the arrest and upon the verification by Aid Prosecution Police Officer that another person named Sharlet was the warrantee in that case. It is submitted that petitioner has never disclosed this facts to the police officer and it was upon their cross verification the said fact was revealed.

9. It is respectfully submitted that the address mentioned in the warrant was same as that of the petitioner and that was the reason for that she was brought to the police station. The said police action was only the bonafied discharge of the official duty.”

In the counter affidavit filed by responded Nos.4, 5 and 7 to 9, it is stated as follows:-

“4. It is submitted that the Judicial First Class Magistrates Court, Kollam has issued a non bailable warrant dated 17/8/2018 against the accused in S.T 7738/2015. The warrant was issued against Sharlet, Puthanzhikom Purayidom, Near Convent, Eravipuram, Kollam and on 16/11/2018 at about 8.30 A.M, a Police party consisting of respondents 5 and 9 along with Sivakumar C.P.O 6543, WSCPO 5378 Jayakumari and WSCPO 5575 Bindhu went to the house of petitioner. The Police party informed the petitioner about the issuance of warrant by the learned Magistrate and she voluntarily came along with the Police party to the Police station. When she reached the Police Station, she informed the police that she is not the actual person involved in the above case and as per the request made by the petitioner, the Police Party contacted her Counsel and before recording the arrest, the details of the case was crosschecked with the assistance of Aid prosecution Officer of concerned Court and on verification, it was revealed that the another person named Sharlet was the warrantee in that case and the petitioner is not the person implicated as the accused against Sharlet, Puthenazhikam Purayidom, Near Convent, Eravipuram, Kollam.

5. It is respectfully submitted that the address mentioned in the warrant was same that of the petitioner and that was the reason for that

she was brought to the Police station in this context it is respectfully pointed out that as can be seen from Ext.P2 bail order, the address mentioned in the above writ petition, the house name Puthanazhikam Purayidom was deliberately suppressed by the petitioner to mislead the court.

6. It is relevant to note that the address mentioned in the warrant was same that of the petitioner and the action taken by the Police in this regard are with bonafides and in discharge of their official duties. The police is duty bound to execute the warrants promptly and without delay.

7. It is also pointed out that the petitioner has suppressed the fact that two Women Senior Civil Police Officers were also there when she was taken to the Police Station. The averments and allegations raised in the writ petition regarding the alleged harassment meted out by the petitioner are absolutely false and untrue”.

The decisions relied on by the learned counsel appearing for the petitioner do not, in my view, aid the petitioner in the facts and circumstances of the case. In ***Shyam Balakrishnan (Supra)*** the Court was dealing with a situation where the aforesaid Shyam Balakrishnan was picked up by certain Police officials, dressed in plain

clothes, when he was traveling on a motor cycle to Korom junction in Wayanadu district, on the ground that the motor cycle in which he was traveling belonged to two persons, who were being attempted to be traced by the Police in connection with Maoist activities. In ***Vipin P.V. (Supra)*** this Court was concerned with a situation where a young lawyer, who was returning after watching a movie, late at night, was intercepted by a patrol vehicle and was brutally attacked, causing injuries to him. The marked differences between the cases considered by this Court in ***Shyam Balakrishnan (Supra)*** and ***Vipin P.V. (Supra)***, and this case is that, here the Police were executing a Non-Bailable Warrant issued by the Judicial First Class Magistrate Court-I, Kollam, and as already demonstrated, the name and address of the petitioner was strikingly similar to the name and address of the person mentioned in Ext.R3(a) Non-Bailable Warrant. While the learned counsel appearing for the petitioner has taken pains to establish with reference to the pleadings in WP(C) No.37828/18,

the Contempt of Court proceedings arising therefrom, as also the directions issued by this Court in WP(C) No.37828/2018 that, respondent Nos. 4, 5 and 7 to 9 had an axe to grind against the husband of the petitioner, I am unable to see any link connecting the issues brought before this Court in WP(C) No.37828/2018 with the incidents which led to the detention of the petitioner as above, on 16.11.2018. As already noticed, WP(C) No.37828/2018 was a writ petition filed by the petitioner along with her husband for Police protection. In that view of the matter, I am not inclined to hold that the petitioner has made out any case for the award of compensation in exercise of the jurisdiction of this Court under Article 226 of the Constitution of India. The other substantial relief sought for in the writ petition is for a direction to respondent Nos.4 to 9, not to harass the petitioner. With the passage of time, the officials against whom allegations of harassment were raised have already moved out of the said Police station. The other directions sought for, including criminal action against

respondent Nos.4 to 9 also cannot be sustained in the light of the findings rendered in this judgment.

In the light of the above, the writ petition fails and it is accordingly dismissed. However, it is necessary in the facts and circumstances of the case to observe that this is a case where there has been an admitted detention of the petitioner in connection with the execution of Non-Bailable Warrant issued against another person. The facts, therefore, bring out the urgent necessity of ensuring that the identity of the person is established clearly before any arrest/detention is made by the Police officials, either in the execution of a warrant issued by the court or otherwise. While I am not able to find any material to establish that the action of respondent Nos. 4, 5 and 7 to 9 in this case was *mala fide*, the detention of the petitioner, on the basis of a wrong identity, has caused extreme prejudice to her. Therefore, notwithstanding the fact that I have found that the petitioner is not entitled to any compensation or for any

of the other reliefs sought for in the writ petition, I deem it appropriate to direct the State Police Chief to come out with suitable instructions to ensure that similar instances of arrest or detention, on the basis of the wrong identity, does not result in the invasion into the life and liberty of innocent citizens.

**Sd/-
GOPINATH P.
JUDGE**

ats/ajt

APPENDIX OF WP(C) 37943/2018

PETITIONER'S EXHIBITS

- EXHIBIT P1** COPY OF THE FIR IN ERAVIPURAM Police CRIME NO.573/2018.
- EXHIBIT P2** COPY OF THE ORDER DATED 29/08/2018 IN B.A.NO.5503/18.
- EXHIBIT P3** COPY OF THE NEWSPAPER ITEM PUBLISHED IN THE MALAYALA MANORAMA DAILY DATED 17/11/2018.
- EXHIBIT P4** COPY OF THE COMPLAINT GIVEN TO THE 2ND RESPONDENT DATED 17/11/2018.
- EXHIBIT P5** COPY OF THE WRIT PETITION 37828/2018 DATED 21.11.2018.
- EXHIBIT P6** COPY OF THE IA 1/2018 IN WPC 37828/2018 DATED 26.11.2018.
- EXHIBIT P7** COPY OF THE INTERIM ORDER DATED 07.12.2018 OF THIS HON'BLE COURT IN WPC 37828/2018.
- EXHIBIT P8** COPY OF THE REPLY AFFIDAVIT DATED 13.12.2018 IN WPC 37828/2018.
- EXHIBIT P9** COPY OF THE IA 1/2019 IN WPC 37828/2018 DATED 23.01.2019.
- EXHIBIT P10** COPY OF THE IA 2 & 3/2019 IN WPC 37828/2018 DATED 28.02.2019.
- EXHIBIT P11** COPY OF THE ADDITIONAL STATEMENT DATED 27.03.2019 OF THE DISTRICT POLICE CHIEF, KOLLAM.

EXHIBIT P12. COPY OF THE JUDGMENT DATED 10.06.2019 OF THIS HON'BLE COURT IN WPC 37828/2018.

RESPONDENT'S EXHIBITS

EXHIBIT R3(A) TRUE PHOTO COPY OF THE WARRANT ISSUED BY THE HONBLE JUDICIAL FIRST CLASS MAGISTRATE COURT KOLLAM.