

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 14.11.2019**

**CORAM**

**THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM**

**W.M.P.No.37619 of 2017**

**in**

**W.P.No.33916 of 2017**

1.S.Rajarethinam (Deceased)

2.K.Saroja

3.Pozhil

(P-2 and P-3 substituted as Lrs  
of the deceased first petitioner vide  
order of Court dated 04.11.2022 made  
in WMP No.28287 of 2022 in  
WP No.33916 of 2017)

..

Petitioners

-VS-

1.The State of Tamil Nadu,  
Represented by the Principal Secretary to Government,  
Home Department,  
Secretariat,  
Chennai – 600 009.

2.The Director General of Police,  
Kamarajar Salai,  
Mylapore,  
Chennai – 600 004.

3.Mr.Arun Sakthi Kumar

4.Mr.Kumar

5.Mr.Stephen Jose

6.Mr.Vimal Kumar

7.Mr.Mohammed Samseer

8.Mr.Chella Durai

9.Mr.Palani

10.Sagar

11.Mr.Jose .. Respondents

This miscellaneous petition is filed under Article 226 of the Constitution of India for an interim direction to direct the respondents 1 and 2 to place respondents 3, 4, 6 and 7 under suspension pending disposal of the writ petition.

For Petitioner : Mr.M.Radhakrishnan for  
M/s.T.Fenn Walter Associates.

For Respondents-1 & 2 : Mr.P.Kumaresan, Additional  
Advocate General assisted by  
Mr.S.Rajesh, Government Advocate.

For Respondents-6 & 8 : Mr.G.Saravanan

### **ORDER**

The writ on hand has been instituted to direct respondents 1 and 2 to place respondents 3, 4, 6 and 7 under suspension and initiate appropriate disciplinary action against respondents 3 to 11.

2. The learned counsel for the petitioner contended that the deceased petitioner was an Advocate who had the standing experience of more than 8

years at the bar. He was a Social Activist and was conducting a large number of cases touching human rights violations in various Courts.

3. At the time of the incident, he was conducting near about 500 cases and he was a busy legal practitioner. At midnight of 03.11.2015, when the deceased petitioner was going through some case papers and when his family members were asleep in his residence, the police knocked on the doors and entered his house, and had taken him forcefully to the Police Station. The daughter of the deceased petitioner was sleeping in a separate room and the policeman tried to open the said room. When his wife was attempting to take photographs of the incident with her mobile phone, her mobile phone was also snatched from her. The learned counsel for the petitioner narrated the entire incident wherein the deceased petitioner and his family members were being harassed during night hours without possessing any valid document to act in accordance with the law.

4. In the context of the alleged incident that occurred on 03.11.2017, the learned counsel for the petitioner reiterated that none of the procedures prescribed by the Hon'ble Supreme Court of India in the ***D.K.Basu's*** case were followed and the policeman on that day and violated the rule of law in entirety

and committed not only an act of misconduct but also violence.

5. The deceased petitioner was produced before the learned Magistrate through a Senior Lawyer, appointed as an Advocate Commissioner to visit the police station and the learned counsel for the petitioner in this regard relied on the learned Magistrate's order dated 04.11.2017, in Criminal M.P.No.6061 of 2017. The incident witnessed by the Advocate Commissioner / senior member of the bar was recorded by the learned Magistrate. Accordingly, the deceased petitioner was admitted in the Government Medical College Hospital Tirunelveli, and underwent treatment for injuries sustained. He was admitted to the hospital for about 24 days and underwent continuous treatment for grave injuries.

6. Since no action was taken by the competent authorities of the police department, complaints were submitted and the order of the learned Magistrate was also communicated to the concerned authorities, and thereafter they acted upon and suspended the respondent officials 3, 4, 6 and 7 and after some time, the order of suspension was revoked and they were reinstated. It is brought to the notice of this Court that the 8th respondent was allowed to retire from service, without prejudice to the pending inquiry initiated against him, in the

year 2019.

7. The learned counsel for the petitioner contended that there was an absolute violation of rule of law and not even a single procedure contemplated in *D.K.Basu's* case of the Hon'ble Supreme Court was followed and the deceased petitioner was tortured, and therefore serious actions are warranted.

8. The learned Additional Advocate General, appearing on behalf of the official respondents 1 and 2 seriously objected to the said contentions by stating that all required actions were initiated without any lapses. Respondents 1 and 2 immediately placed the concerned officials under suspension and the inquiry was completed. RDO inquiry was ordered and the report was submitted, thereafter an FIR was registered and the investigation was conducted and a final report was filed on 07.11.2022.

9. The sanctity of the final report was questioned by the learned counsel for the petitioner.

10. The learned Additional Advocate General reiterated that regarding the lapses committed by the concerned police authorities, all suitable actions are

initiated and even now the Deputy Superintendent of Police, CBCID addressed a letter to the Superintendent of Police, CBCID, on 10.11.2022, for initiation of departmental disciplinary proceedings against all the officials.

11. In fact, the departmental disciplinary proceedings were initiated in the year 2017 itself by placing those officials under suspension. However, no progress was made in respect of the departmental disciplinary proceedings for the past about 5 years. No charge memo under the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules were issued so far and no final order has been passed. Contrarily a mere warning memo was issued.

12. Perusal of the records placed before this Court reveals that the approach of the police officials are lackadaisical and the long delay has been taken as an undue advantage and even now, the actions initiated were not pursued in accordance with the statute and rules in force. By keeping the matter pending for long years, the authorities competent may not form an opinion that they can bury the issues. The public authorities are expected to act spontaneously and swiftly as required under the law. Competent authorities / police officials violating the orders of the Hon'ble Supreme Court / Rule of law must be subjected to further actions by following the procedures as

contemplated. Inaction will result in losing of trust on the system in the public domain.

13. Competent police authorities are armed with wide powers and they are enjoying a special status in the society. Their duties and responsibilities are onerous in nature. Thus, any illegality or violation of rule of law, if committed by the law enforcing authority, it is to be viewed seriously, since such illegalities are causing infringement of the fundamental right of the citizens. Police authorities are expected to perform their duties vigilantly and diligently and in the interest of public without fear or favour. Excess exercise of power would cause serious consequences as the victims are losing their livelihood, reputation, image, more so, they are deprived of their basic rights.

14. Any growing trend of indiscipline in the uniformed services, at no circumstances be tolerated by the State. Indiscipline amongst the uniformed services is a greater threat to the democracy. Our great nation is marching towards vibrant democracy. Illegalities by law enforcing authority would have serious repercussions in the matter of fundamental rights ensured under the Constitution to every citizen. Excess exercise of power by the police authorities cannot be taken lightly or leniently. It would cause irreparable prejudice to the

public at large and would effect the fundamental rights of the citizens. Thus, every citizen must feel that he/she can enjoy the fundamental rights enunciated under the Constitution freely and subject to other laws in force. The constitutional Courts expanded the scope of the fundamental rights of the citizens, more specifically under Article 14, 16, 19, 21 etc. Thus, the police authorities are expected to understand the scope of the fundamental rights enunciated under the Constitution of India while initiating actions against any person and while following the procedures as contemplated.

15. During the pendency of the writ petition for the past about five years, the respondents have not filed any counter affidavit stating that the respondents had followed the procedures as contemplated, including the principles laid down by the Hon'ble Supreme Court of India in ***D.K.Basu's*** case. Contrarily, the report of the learned Magistrate reveals about the excessiveness of the police and an act of violation allegedly committed by them. The contents in the report of the learned Magistrate cannot be brushed aside. Thus, the order of the learned Magistrate dated 04.11.2017 is to be considered by this Court and it establishes a prima facie case against the police authorities regarding the violations, excess exercise of power, etc. The Court appointed learned Senior



Lawyer who visited the police station and had taken the deceased petitioner in custody and admitted him in the Government Hospital for treatment and he underwent treatment for about 23 days. Thus, this Court is of an opinion that none the procedures contemplated by the Hon'ble Supreme Court of India in ***D.K.Basu's*** case was followed and the respondents have so far not established that they have followed any of the procedures contemplated in the said judgement.

16. In paragraph 36 of ***D.K.Basu's*** case wherein, the Hon'ble Supreme Court held that *“failure to comply with the requirements herein above mentioned shall afford from rendering the official concerned liable for departmental action, also render him liable to be punished for contempt of Court and the proceedings of contempt of Court may be instituted in any High Court of the County, having territorial jurisdiction over the matter.”*

17. In view of the facts and circumstances, this Court is inclined to institute *suo-moto* contempt proceedings against respondents 2 to 11 for their inactions and for the violations of the mandatory guidelines issued in

**D.K.Basu's** case. Accordingly, the Registry is directed to number the contempt proceedings and issue notice to respondents 2 to 11. Since it is a civil contempt committed by the respondents with reference to the orders passed in **D.K.Basu's** case, the contempt proceeding is directed to be listed before this Court.

18. List the matter for further hearing and for passing orders on 15.12.2022.

14.11.2022

sha

WMP No.37619 of 2017 in W.P.No.33916 of 2017

**S.M.SUBRAMANIAM, J.**

*sha*

**W.P.No.33916 of 2017**  
**and**  
**W.M.P.No.37619 of 2017**

**14.11.2022**