

A.Gomathieaswar vs G.Raja Meena on 19 June, 2015

Author: S.Manikumar

Bench: S.Manikumar, V.M.Velumani

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.06.2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

and

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. (MD).Nos.120 of 2015

and 121 of 2015

A.Gomathieaswar .. Appellant in both the appeals

versus

G.Raja Meena .. Respondent in both the appeals

Prayer: Civil Miscellaneous Appeals are filed under Section 19 of the Family Court Act, 1984 to set aside the judgment and decree dated 10.03.2014 made in H.M.O.P.Nos.255 and 443 of 2006 respectively on the file of Family Court, Madurai and consequently allow the civil miscellaneous appeals

!For Appellant : Mr.J.Anandkumar

^For respondent : M/s.V.Janakiramulu

:JUDGMENT

(Judgment of the Court was delivered by S.MANIKUMAR ,J.) Material on records shows that vide order, dated 24.02.2015, this Court has directed the matter to be referred to Mediation and Conciliation Centre, Madurai Bench of Madras High Court, pursuant to which, Mediation and Conciliation Centre has taken up the case on its file in Mediation Case No.96 of 2015. Vide proceedings dated 10.06.2015, the Mediation Centre has reported that the parties to the lis have compromised as follows;- ?Both sides, out of their own volition and without any pressure or coercion from any side have agreed as follows:

1. The parties fully settled the case amicably without any interruption of other parties.
2. Both parties have entered into memorandum of understanding dated 10.06.2015 and they have produced the said document duly signed by them and the same may be treated as part and parcel of this compromise.

3) Both parties have agreed to dispose the Appeals as per the terms and conditions of the above said memorandum of understanding dated 10.06.2015.?

2. Mediation Centre has already reported that both the parties and the respective counsel to the appeal have duly signed the memorandum of compromise entered into between the parties, which is reproduced hereunder;- ?This Memorandum of Understanding is made and executed on this the 10th day of June 2015 at Madurai between G.Raja Meena, W/o.A.Gomathi Easwar, Indian, Hindu aged about 37 years residing at No.7/17, Sevalayam Street, Shenoy Nagar, Madurai ? 625 020, hereinafter referred to as party of the first part.

AND Mr.A.Gomathi Easwar, S/o.A.R.T.A.Amirthalingam, India, Hindu aged about 45 years, residing at No.3/14, 1st Main Road, Kalaimagal Nagar, Ekatuthangal, Chennai-600 032, hereinafter referred to as party of second part. Whereas, the Party of the first part is the wife of party of the second part.

Whereas, the parties first part and second part submit that the marriage between them took place on 05.09.2003 as per the Hindu rituals and customs at Chennai. After the said marriage both of them lived together at No.166, Defence Colony, Ekatuthangal, Chennai- 600 032. Out of the wedlock, a male child namely ?Sri Arumugam? was born on 14.07.2004. After the birth of the child the matrimonial life was not happy and there were frequent misunderstandings between the parties and they are living separately. WHEREAS the party of the first part gave a complaint before the Inspector of Police, Tallakulam Police Station, Madurai against the party of the second part and his family members and the case has been registered in Crime No.13 of 2006. Meanwhile the party of the second part filed a petition for divorce before the District Court, Chengalpattu and the same has been taken as H.M.O.P.No.284 of 2006 meanwhile the party of the first part filed an application before the Family Court at Madurai in H.M.O.P.No.443 of 2006. The party of the first part filed an application for transfer before the Hon'ble High Court, Chennai for transferring the H.M.O.P.No.284 of 2006 filed by the party of the second part and the same has been transferred to the Family Court at Madurai and the same has been numbered as H.M.O.P.No.255 of 2007. Meanwhile the party of the first party filed an application before the Judicial Magistrate, Madurai under Sections 23(1) and 21 of Prevention of Women from Domestic Violence Act, 2005 and the same was taken on file in C.C.No.23 of 2007.

WHEREAS the party of the second part filed an application before the Hon'ble High Court to quash the proceeding pending on the file of Judicial Magistrate-II, Madurai for the offence punishable in Domestic Violence Act and the same was allowed by the Hon'ble High Court, Madurai Bench at Madras High Court on 08.04.2008 in Criminal O.P.No.569 of 2007. Meanwhile the party of the first part filed a petition before the Hon'ble High Court for withdrawal of criminal case under Section

498(b) and the same has been allowed.

WHEREAS the party of the first part filed an application before the Hon'ble High Court at Chennai for the custody of minor child in O.P.No.445 of 2009 was withdrawn by the same on 24.04.2015.

WHEREAS HMOP 443 of 2005 filed by the Party of the first part for restitution of conjugal rights were jointly tried together and the common order was passed by dismissing the HMOP 255 of 2007 filed by the party of the second part and the HMOP 443 of 2006 filed by the party of the first part was allowed by the learned Family Court Judge, Madurai for restitution of conjugal rights by its order dated 10.03.2014. As against the same the party of the second part filed civil miscellaneous appeal before the Hon'ble High Court Madurai Bench at Madras High Court in C.M.A.Nos.120 and 121 of 2015 and the same is admitted and pending. At the time of admitting the above C.M.A. the Hon'ble High Court referred the dispute for resolving the issue before the Mediation and Conciliation Centre, High Court, Madurai. WHEREAS the party of the first part and party of the second part submit before the Mediation and Conciliation Centre, that after several rounds of discussions the parties have mutually arrived at consensus. Based on such consensus, the parties have agreed to a full and final settlement in terms of joint compromise memorandum of understanding.

Now, this Memorandum of Understanding witness as follows:

The party of the first part and party of the second part mutually agree to the following terms of final compromise memorandum of understanding and to have the C.M.A.Nos.120 and 121 of 2015 allowed granting decree of divorce between the parties.

1.The party of the second part (Husband) agrees to pay a sum of Rs.12,00,000/- (Rupees twelve lakhs only) to the party of the first part (wife) towards the full and final settlement of all her claims for permanent alimony. Today on 10.06.2015, a sum of Rs.12,00,000/- was received by the party of first part by way of two demand drafts drawn on Karnataka Bank, Cathedral Road, Chennai for a sum of Rs.7,00,000/- vide D.D.No.112845, dated 27.04.2015 and a sum of Rs.5,00,000/- vide D.D.No.322155 dated 08.06.2015.

The Party of the first part has withdrawn G.W.O.P.No.445 of 2009 on 24.04.2015 filed by her for custody of minor child, before the Hon'ble High Court, Chennai. Further, the party of the first part declare that she has no claim over the custody of the minor child in future and she also accepts the minor child would be under the care and custody of the party of the second part.

3.The parties of the first and second part have declared that the marriage between them is irretrievably broken down and therefore, they agree to dissolve the marriage by a decree of divorce.

4.The Party of the First part hereby agrees that in view of the conciliation and in consequential settlement arrived at and as much as pursuant to the receipt of Rs.12,00,000/- as stated above from

the party of the second part, the party of the first part, hereby declare that she has no claim whatsoever against the party of the second part in any manner and she has no claim in future in respect of the property belonging to the party of the second part either movable or immovable.

5. Both parties herein shall withdraw or discontinue all the cases civil or criminal which are pending each other. Further, the parties are agreed to exchange the personal belongings to each other.

6. Today 10.06.2015 the party of the second part handed over all the Sreedhana articles, Educational Certificates and personnel belongings of the party of the first part. The party of the first part acknowledges the same. Likewise party of the first part handed over the jewellerys gifted by the party of the second part and the party of the second part acknowledges the same.

7. Both parties shall scrupulously comply the terms and conditions of this final Compromise Memorandum of Understanding.

8. In the event of default of any of the terms and conditions of this final Compromise Memorandum of Understanding by any of the party herein, the mediator shall resolve the issue amicably by further mediation. In witness thereof the parties have set hand and signed this Memorandum of Understanding on the date, month and year as mentioned.?

3. In the light of the consensus and memorandum of compromise dated 10.06.2015 recorded supra, the same shall form part of the record. There shall be a decree in terms of the Memorandum of Compromise. The appeals are disposed of accordingly. No costs.

?BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT %DATED: 25.06.2015 *CORAM THE HONOURABLE MR.JUSTICE S.NAGAMUTHU +CrI.R.C.(MD).No.167 of 2015 and #Sujakhani .. Petitioner/ Accused No.7 Vs. \$State through the Inspector of Police, Uchipuli Police Station, Ramanathapuram District.

(Crime No.301 of 2012) .. Respondent / Complainant PRAYER Criminal revision filed under Section 397 r/w 401 of Cr.P.C. against the order, dated 29.10.2014, made in Cr.M.P.No.2084 of 2013 in S.C.No.68 of 2013 on the file of the learned Principal Sessions Judge, Ramanathapuram.

!For Petitioner

: Mr.N.Anantha Padmanaban

^For respondent

: Mr.K.Chellapandian,
Additional Advocate General
assisted by Mr.P.Kannithevan,
Government Advocate
(Criminal side)

: ORDER

Six precious lives were snatched away in a gruesome manner by the merciless act of the criminals. It all happened on the night intervening 30.09.2012 and 01.10.2012. Mrs.Kalimuthu, a woman, aged about 30 years, her father and four children were all sleeping in their lonely house at Thoppuvalasai

Village in Ramanathapuram District. They would have never anticipated that end to their lives was fast approaching. It is alleged that by around 01.00 AM, when they were fast asleep, their house was burnt into ash. They also perished in flames. This occurrence was not witnessed by anyone. On the next day, viz., on 01.10.2012, at about 9.00 a.m., one Vallaichamy, who is a relative of the deceased, made a complaint to the Sub Inspector of Police, Uchipuli Police Station, upon which the present case in Crime No.301 of 2012 was registered under Sections 147, 436 and 302 IPC. The case was investigated and finally on 29.12.2012, one Mr.P.Jayachandran, the Inspector of Police, Uchipuli Police Station, filed a final police report before the learned Judicial Magistrate No.II, Ramanathapuram. In the said final report, he had reported that a total number of nine persons were involved in the occurrence. The learned Magistrate took cognizance of the offences under Sections 120-B, 302 r/w 109 and 436 r/w 109 IPC against the accused. On committal, the case was taken cognizance of by the learned Principal Sessions Judge, Ramanathapuram.

2. The petitioner ? Mr.A.Sujakhani, is the seventh accused in the case. He filed a petition before the learned Principal Sessions Judge, in Cr.M.P.No.2084 of 2013 seeking discharge. In the said petition, he alleged that there was no evidence whatsoever collected against him and the entire final report was based only on the confession allegedly made by the first accused to the investigating officer during the course of investigation. The learned Principal Sessions Judge, however, inter alia held that the admissibility or acceptability of the confessions are all matters to be decided at the time of trial. Thus according to the learned Sessions Judge, there were grounds to frame charges against the accused. Accordingly, the learned Sessions Judge dismissed Cr.M.P.No.2084 of 2013, by order dated 29.10.2014. Challenging the same, the petitioner has come up with the present Criminal Revision Case.

3. Before proceeding further, let me narrate the contents of the final report filed by Mr.P.Jayachandran, upon which cognizance was taken. According to the said final report, the deceased were, for a long time, residing in the house which was burnt. Her father and four children were also residing with her. The land actually belonged to one Louis Raj, who has been arrayed as the sixth accused in the case. There was an arrangement between the sixth accused and the present petitioner, by which the present petitioner offered to pay some amount of consideration for the land and to sell the land to various other persons. As per the said arrangement, the present petitioner sold away the properties to various persons and out of the said consideration, he paid the amount, as agreed upon, to the sixth accused. The sixth accused, accordingly, executed sale deeds in favour of the purchasers.

4. It is the further case that the deceased, who had no right whatsoever on the land, refused to vacate. The family members of the deceased were often threatened to vacate. There were also proceedings before the Revenue Divisional Officer and the other authorities between them. Since the deceased family did not vacate the land and hand over vacant possession to the purchasers, there developed ill-feeling, which later on developed into a very strong motive for Mr.Louis Raj - 6th accused and the petitioner herein. According to the final report, seven days prior to the alleged occurrence, there was a conspiracy. In the said conspiracy, the accused Nos.1, 6 & 7 participated. The conspiracy was to engage hirelings to do away with the entire family members of the deceased. Regarding this conspiracy, though in the final report, there were allegations and cognizance was

taken by the Court, there were no materials collected to even make out a prima facie case to frame charge of conspiracy, on this aspect, against the petitioner, except the confession statement said to have made by the first accused on his arrest to the Police.

5. It is the further allegation in the said final report that on 30.09.2012 in the evening, in the seashore, there was another conspiracy, in which A1, A2 and A3 participated with few unknown persons. This conspiracy was the continuation of the earlier conspiracy and forming part of the same transaction. Regarding the second conspiracy also, Mr.P.Jayachandran relied on the so called confession statement given by the first accused to him during the course of investigation. Apart from the above, two witnesses cited as witnesses 26 & 27 had seen these three accused together in the seashore. It is based on the statements of these two witnesses and the confession given to the police, Mr.PJayachandran reported that there was second conspiracy.

6. It is further reported that in the actual occurrence, three accused viz., A1 ? Mr.Lathe Muniyandi, A2 -Vellaisamy and A3 ? Centru @ Nagarajan, participated. In other words, these three accused only burnt the house and committed the murder of all the six inmates of the house. In order to prove the participation of these three accused in the actual occurrence in pursuance of the conspiracy also, there were no sufficient materials collected by the earlier Investigating Officer.

7. When this Criminal Revision Case came up for hearing before this Court, on 17.04.2015, on considering the above facts, this Court passed the following order:

?It often happens in this country that even in heinous crimes, the Police bring to book some persons as the accused, the Courts proceed with the trial, ultimately, only to acquit the accused for want of proof of the involvement of the accused. The society at large, without fully aware of the nature of the evidence produced by the Police, at times, put the blame on Courts of law for acquitting the accused. The system is impelled to bear the ignominy. On that score, no Court of law can travel beyond the frame work of law to punish the accused where the investigation is shoddy and no materials have been placed before the Court by the Police. But, it cannot be lost sight of that when the real culprits escape from clutches of law for want of evidence, the net result is the failure of justice to the victims and the society. Therefore, in order to ensure justice, it becomes necessary in extreme cases that the Courts have to monitor the investigation which should otherwise be done by the superior police officers. The instant case is a classical illustration of such a grave situation, warranting the intervention of this Court.

2.Six precious lives have been snatched away in a gruesome manner. The petitioner is the 7th accused in the case in S.C.No.8 of 2013 on the file of the Principal Sessions Judge, Mahila Court, Ramanathapuram. Totally there are 9 accused in the case. They have been prosecuted for offences under Sections 147, 436, 302, 120(B) read with Section 109 and 149 IPC.

3. Due to a civil dispute, according to the prosecution, six people including four children have been done to death, while they were fast asleep in their house. The house was burnt along with the deceased. The Investigating Officer, in the final report, has cited as many as 44 witnesses and a number of documents. Contending that from the police report and the documents and statements submitted there with, absolutely, there is no material against the petitioner to frame charges, the petitioner filed Crl.M.P.No.2084 of 2013 before the lower Court seeking discharge. The learned Principal Sessions Judge, however, by order dated 29.10.2014 dismissed the said petition thereby declining to discharge the petitioner. Challenging the same, the petitioner has come up with this revision.

4. This revision came up for hearing on 15.04.2015. On that day, the learned counsel for the petitioner took me through all the materials placed along with the final report as well as the final report and submitted that there is no material against the petitioner to frame charges. According to the final report, one week prior to the actual date of occurrence, namely, 01.10.2012, there was a conspiracy among the accused involving the petitioner, in which, the conspirators had hatched a plan to commit murder of all the six deceased. The task was, according to the conspiracy, entrusted to the first accused. It is the further case of the prosecution that on the previous day before the actual day of occurrence, some of the accused were found on the seashore in the occurrence village, in which also, it is alleged that the conspiracy was again reiterated. On the following night, the occurrence had taken place.

5. So far as the petitioner is concerned, even according to the prosecution case, he was not present at the time, when the 2nd conspiracy was hatched and he did not participate in the actual occurrence as well. It is their definite case that in the first conspiracy, which took place seven days prior to the alleged occurrence alone, the petitioner participated.

6. In the course of the proceedings, this Court, while going through the papers, expressed its displeasure that the investigation has not been done in the manner, in which, it is required to be done by the police.

Regarding the reasons for such displeasure and materials available on record, I refrain from making any record, because any comment, which I may make, may have influencing effect in the mind of the trial Court, as the trial is pending. I deem it suffice to record my displeasure over way in which the investigation has been done.

7. I do not understand as to how the Deputy Director of Prosecution, after having gone through the case diary, was pleased enough to give node for final report. The Investigating Officer, who was present before this Court, was not able to say anything to obviate doubts, loopholes, shortcomings, etc., which this Court had noticed. His explanation was not at all satisfactory to this Court. Therefore, this Court directed the Superintendent of Police, Ramanathapuram District to be present before this Court with necessary explanation and also to state as to whether he had any occasion to

monitor the investigation in this case, though six valuable lives have been lost in the occurrence in a very gruesome manner.

8. As directed, today, the Superintendent of Police, Mr.M.Mayilvahanan is present before this Court. I have heard the learned counsel for the petitioner and the learned Additional Advocate General appearing for the respondent.

9. The Superintendent of Police tacitly admitted before this Court that he had no occasion to go through the case diary in this case until he was summoned by this court to appear today. He would further explain that he was pre-occupied in the law and order issues due to communal clash in Ramanathapuram District, and thus he had no occasion to monitor the investigation in this case. However, he would submit that having gone through the papers, more particularly the case diary, now, he himself is not satisfied with the investigation. In order to rectify the same, he would submit that he himself would take up the further investigation of this matter and leave no stone unturned by doing a thorough further investigation. He has also filed an affidavit to that effect. The said assurance given to this Court is appreciated. In the instant case, though this Court, as of now, may find that there are no sufficient materials against the petitioner, on that score, I am not inclined to pass final order in this revision at this stage.

10. I am prima facie satisfied that the investigation has been so badly done. A fair investigation, which will lead to fair trial has been held to be a fundamental right guaranteed under Article 21 of the Constitution of India, [vide the Judgment of the Hon'ble Supreme Court, in Babubhai Vs. State of Gujarat, [2010 [12] SCC 254]. The fairness in investigation is not a concept relevant only to the accused. Fairness in investigation means the investigation should be fair to the victim, to the accused and to the Society at large. Similarly fair trial means that trial should be fair to one and all, namely, the accused, victims, their relatives and the Society at large. When the fair investigation and fair trial are constitutional mandates provided under Article 21 of the Constitution of India, in the instant case, at this stage, this Court cannot simply close its eyes and allow the real culprits, whoever, it may be to escape by simply working like a machine on the papers placed before the Court. It is necessary for this Court to ensure that the above fundamental right guaranteed under the Constitution of India is really achieved. Therefore, as a part of the Constitutional obligation of this Court, I am of the view that it is absolutely necessary for this Court to issue a direction to the Superintendent of Police, Mr.M.Mayilvahanan, to take up the case for further investigation to himself to be assisted by a team of efficient officers and to file an additional final report before the learned Principal Sessions Judge, Mahila Court, Ramanathapuram. Until such, additional final report is submitted, the further proceedings before the learned Sessions Judge, Mahila Court, Ramanathapuram, to which now the case has been transferred, shall stand stayed.

12. Mr.Mayilvahanan, the Superintendent of Police, Ramanathapuram District, who has been entrusted with the task of further investigation, is not required to seek any further formal permission from the jurisdictional Magistrate or from the Sessions Court. He is granted two months time to do the investigation and he shall report to this Court about the progress made in the matter on 25.06.2015. The Registry is directed to communicate this order to the trial Court. The Registry is to list this case for further hearing on 25.06.2015.?

8. On 17.04.2015, Mr.N.M.Mylvahanan, the Superintendent of Police, Ramanthapuram District, assured to this Court that he would take up further investigation and come up with an appropriate report with materials.

9. Accordingly, today Mr.N.M.Mylvahanan, the Superintendent of Police, Ramanthapuram District, is present in Court and he has filed an affidavit, wherein he has stated as follows;

?It is respectfully submitted that the Hon'ble Madurai Bench of Madras High Court in its order in CRL.RC(MD)No.167/2015 in M.P(MD)No.01/2015 dated 17.04.2015 directed me to conduct further investigation in Uchipuli Police Station Crime No.301/2012 u/s 147, 436, 302, 120 (B) r/w 109 and 149 IPC. It is submitted that as per the order I took up investigation of the above said case on 24.04.2015 by forming a team of officers Additional Superintendent of Police Head Quarters and Deputy Superintendent of Police, District Crime Records Bureau, Ramanathapuram District to assist me in the investigation and proceeded with investigation. I visited the scene of occurrence along with my team, Revenue Officials and Scientific Experts, prepared observation Mahazar, Rough Sketch and took Photographs and examined witnesses at and around SOC and recorded their statements under section 161(3) Cr.P.C and collected documentary evidences. It is submitted that I was in the meantime deputed to attend IPS Officers Induction Training course held at National Police Academy, Hyderabad from 05.05.2015 to 12.06.2015. During my absence, I directed the Additional Superintendent of Police Head Quarters and Deputy Superintendent of Police, District Crime Records Bureau, Ramanathapuram District to conduct further investigation in this case. The Additional Superintendent of Police, Headquarters, Ramanathapuram District examined witnesses, recorded their statements under Section 161 (3) Cr.P.C. and also collected material evidences.

It is submitted that after completion of my training I continued the investigation from 14.06.2015 and examined remaining witnesses; all the nine accused were also enquired and their statements recorded. There are in all 108 witnesses who were examined and fifty documentary evidences were also collected to prove the offence.

It is submitted that from the statements of witnesses and documents collected and perused the following four accused namely (1) Muniyandi @ Lathe Muniyandi (2) Kalimuthan (3) Sujakhani and (4) Louis Raj appear to have committed offences punishable under section 302, 436, 120 (B), 109 r/w 34 IPC.

It is humbly submitted that after completion of my investigation I have filed additional final report against the above stated four accused on 24.06.2015 before the Hon'ble Mahila Court, Ramanathapuram as directed and the remaining five accused already charged were deleted from the final report because of lack of incriminating evidences against them. The Police Officers who erred in the investigation may be dealt with departmental proceedings for the lapse.

Wherefore it is prayed that this Court may be pleased to accept this compliance report in the interest of Justice and thus render Justice.?

10. He has also produced the case diary for the inspection of this Court. As per the present further investigation police report submitted by him, the conspiracy said to have happened seven days before the occurrence involving the accused 1, 6 & 7 is not true. Similarly, according to him, the second conspiracy involving the accused 1, 2 & 3 and several others on 30.09.2012 on the sea shore is also not true. So far as the actual occurrence, in which the house along with the inmates was burnt, according to the earlier report submitted by Mr.P.Jayachandran, A1 ? Lathe Muniyandi, A2 ? Vellaichamy and A3 Centru @ Nagarajan, together participated, but now as per the present report of the Superintendent of Police, only two people participated in the occurrence viz., the first accused ? Lathe Muniyandi and Kalimuthan [A-8]. It needs to be noted that Mr.Kalimuthan did not participate in the burning of the house, as per the earlier report. The accused 2 & 3 viz., Vellaichamy and Centru @ Nagarajan have been now left out. According to the present report, Mr.Vellaichamy and Mr.Centry @ Nagarajan did not participate in the occurrence at all and contrary report earlier filed by the previous Inspector of Police is not correct.

11. To put it in nutshell, out of the nine accused, against whom earlier report was filed now, five have been omitted. According to the present report submitted by the Superintendent of Police, only four people have participated in the crime viz, Mr.Lathe Muniyandi (A1), Mr.Louis Raj (A6), Mr.Sujakhani (A7) (revision petitioner herein) and Mr.Kalimuthan [A-8]. I have the benefit of going through the case diary also and the report submitted and all other connected materials.

12. The learned Additional Advocate General would submit that the present report, which is the result of a thorough investigation by a higher ranking officer, may be accepted and appropriate direction may be issued to the lower Court to proceed with the trial as against the four accused against whom the present further police report has been submitted.

13. This Court pointed out to the learned Additional Advocate General that when there are now two reports, one by the previous investigating officer and the other by the present Superintendent of Police, which are conflicting and called upon to explain as to why should this Court choose to accept the final report submitted by the Superintendent of Police. For this, the learned Additional Advocate General submitted that since under the monitoring of this Court, the Superintendent of Police has conducted thorough investigation in an unbiased manner, the present report may be accepted. On my part, I have also gone through the case diary. Having gone through the same, I deem it appropriate to accept the said report of the Superintendent of Police. Therefore, the report submitted by the Superintendent of Police now shall be accepted by the trial Court and the trial Court shall proceed further based on the same.

14. It is now brought to my notice that charges have been framed and the case has been made over to the Mahila Court, Ramanathapuram, for trial. Since the accused is entitled for copies of the documents collected during further investigation, such as, statements of witnesses, mahazars etc., the trial Court shall furnish free copies of these documents, statements, mahazars, etc filed along with the further Police report submitted by the Superintendent of Police to the four accused, against whom the present report has been filed, as required under Section 207 of the Code of Criminal Procedure. Since the accused have got right of hearing on these materials and since I am inclined to allow this revision, the charges framed already by the trial Court have to be set aside. The trial Court

should afford sufficient opportunity to the four accused, against whom the final report has been filed, before framing charges.

15. Now, turning to the case of the other five persons viz., Vellaichamy S/o.Aathan (arrayed as A2), Centru @ Nagarajan S/o.Gurusamy (arrayed as A3), Mangalanathan S/o.Kuttichamy (arrayed as A4) Kumar S/o.Thangavel (arrayed as A5) and Punchatcharam S/o.Nagu (arrayed as A9) (hereinafter referred to as 'the victims?'), they shall stand discharged from the case, as, according to the present report, they have got no involvement in the crime at all.

16. Now, the next question is as to whether simply letting these five victims free would amount to doing of justice. In my considered view, it is not so. It is brought to the notice of this Court that these five victims, who are not before this Court, are all poor villagers and they are also illiterate, who are not well-versed with their rights guaranteed under the Constitution of India. It is also brought to the notice of this Court that these five victims were arrested and detained in prison for 93 days, until they were released on bail. The said incarceration in prison for 93 days, in my considered view, would have caused lot of mental agony and trauma for these victims.

17. Apart from the above, they have been dragged to the Court in connection with this case from the year 2012, viz., for three years. The amount of time, money and the energy spent by them cannot be brushed aside. In my considered view, the act of the police, in this case, in falsely implicating these persons in a case of six murders is nothing short of a gravest human rights violation. The right to life guaranteed under Article 21 of the Constitution of India is a very precious right and the State has got every obligation to ensure to its citizens as well as non-citizens of this right. As has been repeatedly held by the Hon'ble Supreme Court, life does not mean a mere existence. Life means, dignified life with all natural human rights to be enjoyed by an individual. In other words, it is the obligation of the State to ensure a dignified life to its citizens. Implicating a person in a criminal case falsely, causing ever lasting stigma not only on him, but also on the entire family, taking him to the Court and by branding him as a murderer for three years, in my considered view, are all very serious human rights violations, violating their right to life guaranteed under Article 21 of the Constitution of India. It is true that these victims of human rights violation are not before this Court. But, at the same time, this Court, being a creature of the constitution, to ensure human rights and the fundamental rights of the citizens of this Country, cannot close its eyes, even after having come to notice that such a serious human rights violation has been committed to these poor innocent villagers.

18. If this Court simply records letting these accused free, without making any more attempt to alleviate their grievances, I am of the firm view that it would not amount to doing of justice. Such course is expected of from this Court. Though these victims are not before this Court, I am of the view that as a measure of alleviating their sorrows and sufferings, monetary compensation needs to be ordered. I am sure that any amount of compensation may not be a substitute for the amount of human rights violations committed by the police in this case. I am only hopeful that the paltry amount of compensation, which I intend to order for, will at least wipe out the tears of these innocent people to some extent. Of course, these persons have got legal right to claim compensation independently from the authorities concerned, but, that will not deter this Court from granting

compensation in exercise of its power under Article 226 of the Constitution of India, as well as Section 482 of the Code of Criminal Procedure. Section 482 of the Code of Criminal Procedure saves the inherent power of this Court to pass any order to meet the ends of justice. In the instant case, I am of the firm view that ordering the State to pay compensation to these victims alone would meet the ends of justice.

19. Now, turning to the quantum of compensation to be awarded, the learned Additional Advocate General would submit that he cannot express any view on this aspect, without getting instructions from the Government. But, the learned counsel for petitioner would submit that going by the agonies, sufferings and the stigma caused to the victims, each may be awarded Rs.5,00,000/- as compensation.

20. Mr.AR.L.Sundaresan, the learned Senior Counsel and Mr.N.R.Elango, yet another learned Senior Counsel, who were present in Court, were requested by this Court to place their views as Amicus Curiae. They expressed that the victims may be entitled for a reasonable amount of compensation, which may go up to a sum of Rs.10,00,000/-, per head.

21. Having regard to these submissions, having regard to the amount of agony, stigma, sorrows and sufferings of these victims, I deem it appropriate to order for compensation of Rs.2,00,000/- per head. This order of compensation will not deter the victims to make separate claims under civil law, if they are so advised for further compensation.

22. In the report submitted by the Superintendent of Police, he has recommended for departmental action against Mr.P.Jayachandran. While considering the question of compensation, I took into account as to whether the victims were falsely implicated, knowingly by Mr.P.Jayachandran or they were implicated without collecting sufficient materials against them. It is seen from the records that Mr.P.Jayachandran had no motive against these victims. He had acted on the confession given by the first accused in the case. But, he had failed to collect materials to verify as to whether the confession given by the first accused was true or whether the involvement of these persons is also true. Thus, it is seen that Mr.P.Jayachandran had failed to collect sufficient materials to verify as to whether these persons were involved in the crime or not. Therefore, as recommended by the Superintendent of Police, it is for the Director General of Police to deal with Mr.P.Jayachandran departmentally, provided the appointing authority has got materials to show that he has committed any misconduct, as per the Service Rules. I do not want to express any opinion regarding the conduct of Mr.P.Jayachandran, because any such opinion or observation, which I may make, may have some influence in the mind of the appointing authority. Therefore, I leave it open for the Director General of Police to decide on the recommendation of the Superintendent of Police.

23. In this Criminal Revision Case, when it was pointed out to the learned Sessions Judge that there were no materials against this petitioner and that the entire final report is based only on the confession said to have been given by the first accused to the police, the learned Sessions Judge has rejected the said contention, by making the following observation:-

?the admissibility or acceptability of the confessions are all matters to be decided at the time of trial?.

24. It is only on this finding, the Trial Court has dismissed the Criminal Miscellaneous Petition filed by the petitioner herein. This observation made by the Trial Court, I regret to say, only shows the total ignorance of the rudimentary principles of the Indian Evidence Act 1872. Section 25 of the Act states that the confession made to a police officer is not relevant and the same shall not be admitted in evidence. Therefore, this Criminal Revision Case deserves to be allowed, the order dated 29.10.2014 made in Cr.MP.No.2084 of 2013, is liable to be set aside and the matter is to be remanded back to the Trial Court for fresh disposal, after furnishing copies of all the documents and after giving sufficient opportunity to the petitioner herein to raise additional grounds.

25. It is also unfortunate to note that in this case, the learned Public Prosecutor, who argued the case before the Trial Court, also did not notice that there were no materials and the investigation was full of flaws. Had he taken notice and advised the police, I believe, they would have made further investigation, after getting necessary permission from the Court. He has also failed on this aspect.

26. The whole episode would not have come to the notice of this Court, but for this Criminal Revision Case filed by the petitioner herein. As I have already pointed out, the five accused, who are now dropped, have not approached this Court. But, for this Criminal Revision Case filed by this petitioner, there would have been no occasion for this Court to order for further investigation, which has resulted in the present report, giving clean chit to the five innocent people. Had the learned Sessions Judge been vigilant, this kind of direction would have been given by him for further investigation.

27. These observations, which I have made hereinabove, only go to show that the agencies, which are expected to be sensitized, have shown disregard to the human rights of these poor people, which has made the State to pay compensation to these victims, vicariously. More often than not, this Court has been making suggestions and at times issuing directions to the Police Department about the need for improving the skill of investigation and to sensitize the Investigating Officers by conducting regular legal workshops. I apprehend that the said observations and directions have not been taken note of seriously. The Tamil Nadu Police, which is even today considered to be one of the best police in the Country, may have to lose its status, prestige and glory, if this trend continues. I am only hopeful that the State Government will take serious note of this situation and take all out efforts to enhance the quality of the investigation and the skill of the investigators.

28. In the result, this Criminal Revision Case is allowed in the following terms:-

The impugned order of the learned Principal Sessions Judge made in Cr.MP.No.2084 of 2013, dated 29.10.2014, is set aside and Cr.MP.No.2084 of 2013 is remanded back to the learned Additional Sessions Judge cum Mahila Court, Ramanathapuram, for fresh disposal, in accordance with law, after furnishing copies of the documents and the statements of the witnesses, submitted by the Superintendent of Police,

Ramanthapuram District, along with the further police report and after affording sufficient opportunity to the petitioner.

The charges framed already against all the accused shall stand set aside. The Trial Court shall afford sufficient opportunity to the accused and then to consider to frame charges, in accordance with law.

The Trial Court shall accept the further police report submitted by Mr.N.M.Mylvahanan, the Superintendent of Police, Ramanathapuram District, and proceed with the case in accordance with law, as expeditiously as possible. The victims, Mr.A.Vellaichamy S/o.Aathan, Mr.G.Centru @ Nagarajan S/o.Gurusamy, Mr.K.Mangalanathan S/o.Kuttichamy, Mr.T.Kumar, S/o.Thangavel and Mr.N.Punchatcharam S/o.Nagu shall stand discharged from the case and they are set free.

The Government of Tamil Nadu, viz., the Secretary, Home Police Department, shall pay a sum of Rs.2,00,000/- as compensation to each of the above persons, viz., Mr.A.Vellaichamy S/o.Aathan, Mr.G.Centru @ Nagarajan S/o.Gurusamy, Mr.K.Mangalanathan S/o.Kuttichamy, Mr.T.Kumar, S/o.Thangavel and Mr.N.Punchatcharam, S/o.Nagu, within a period of two months from today. The amount of compensation shall be disbursed to the above persons by way of cheque or demand draft drawn in the name of the individual concerned, through the District Legal Services Authority, Ramanthapuram and the same shall be reported to this Court.

Consequently, connected miscellaneous petition is closed.

Before parting with this order, I would like to place on record my appreciation for the efforts taken by Mr.N.M.Mylvahanan, the Superintendent of Police, Ramanthapuram District, who has completed the further investigation, within the time frame and submitted a report, which is prima facie found to be satisfactory.

Registry is directed to list the matter, on 25.08.2015 for reporting compliance.

To

- 1.The Secretary, Home Police Department, Chennai.
- 2.The Principal Sessions Judge, Ramanathapuram.
- 3.The Mahila Court, Ramanathapuram.
- 4.The Additional Advocate General, Madurai Bench of Madras High Court, Madurai.

5.The Inspector of Police, Uchipuli Police Station, Ramanathapuram District.

?BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT %DATED : 22.06.2015 *CORAM THE HONOURABLE MR.JUSTICE S.MANIKUMAR AND THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM +Writ Appeal(MD)No.202 of 2015 and #R.Sollalagan S/o/Late Rajamani, President, Valliyoor Aadi Diravidar Chamber Brick Workers Industrial Co-operative Society, No.48, Ambedkar Nagar, Valliyoor, Tirunelveli-627 117. ... Appellant Vs. \$1)The Principal Secretary, Aadi Diravidar & Tribal Welfare Department, Government of Tamilnadu, Chennai-9.

2)The Commissioner and Director, Department of Industries & Commerce, Chennai-28.

3)The Assistant Director, Department of Industries Co-operatives, Enquiry Officer ? Under Sec.81, Valliyoor Aadi Diravidar, Chamber Bricks Workers Industrial Co-operative Society, IND 1827, District Industrial Centre, Madurai-2. ... Respondents Appeal filed under Clause 15 of Letters Patent, against the order made in W.P.No.2330 of 2015 dated 24.02.2015.

!For Appellant : Mr.D.Saravanan ^For Respondents : Mr.B.Pugalendhi, Spl.G.P :JUDGMENT (Judgment of the Court was made by S.MANIKUMAR, J.) Challenging the enquiry proceedings, in Roc.No.005/VBE/2014, dated 06.01.2015, of the Assistant Director, Department of Industries Co-operatives, Enquiry Officer ? Under Sec.81, Valliyoor Aadi Diravidar, Chamber Bricks Workers Industrial Co-operative Society, IND 1827, District Industrial Centre, Madurai-2, the 3rd respondent herein, and consequently, praying for a direction to the Principal Secretary to Government, Aadi Diravidar & Tribal Welfare Department, Chennai, the 1st respondent herein, to initiate fresh enquiry proceedings, based on the petitioner's representation dated 19.01.2015, writ petition has been filed.

2.After considering the rival submissions, writ petition has been disposed of, by order dated 24.02.2015, and the same is impugned in the present appeal.

3.On this day, when the matter came up for hearing, Mr.D.Saravanan, learned counsel for the appellant/petitioner submitted that the writ appeal has become infructuous. He has made an endorsement to that effect.

4.As the enquiry report has already been filed, recording the above endorsement, writ appeal is dismissed. No costs. Consequently, M.P(MD)No.1 of 2015 is closed.

To

1)The Principal Secretary, Aadi Diravidar & Tribal Welfare Department, Government of Tamilnadu, Chennai-9.

2)The Commissioner and Director, Department of Industries & Commerce, Chennai-28.

3)The Assistant Director, Department of Industries Co-operatives, Enquiry Officer ? Under Sec.81, Valliyoor Aadi Diravidar, Chamber Bricks Workers Industrial Co-operative Society, IND 1827, District Industrial Centre, Madurai-2.

?BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT %DATED: 18.06.2015 *CORAM THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN +C.R.P (PD)(MD)No.207 of 2014 and #V.Kubendran ... Petitioner Vs. \$Arulmighu Balasubramanian Swami Koil, Pattukottai rep. by its Hereditary Trustees

1.Velayutha Pandaram

2.Veerapathiran

3.Durairaj

4.Ravi

5.Anjammal

6.Veerakumari

7.Kudiarasu

8.Ranjini devi (The Respondents 3 to 8 were set exparte before the Court below. Therefore the Respondents 3 to 8 may be given up). ... Respondents Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 10.1.2014 in I.A.No.41/2011 in A.S.No.3/2011 on the file of Subordinate Judge, Pattukottai.

!For Petitioner	:	Ms.S.Vijayashanthi
^For Respondents	:	Mr.N.Balakrishnan
		for RR 1 and 2
		RR3 to 8-Given up (vide EB)
:ORDER		

The petitioner filed an Obstruction Petition in E.P.No.40 of 2006 before the District Munsif Court, Pattukkottai. The execution application in E.A.No.14 of 2007 was dismissed by the Executing Court. The said order was challenged before the Appellate Court in A.S.No.3 of 2011.

2.The petitioner, during the currency of the appeal, filed an application in I.A.No.41 of 2011 seeking appointment of Advocate Commissioner. The application was dismissed by the learned Appellate Judge. The order dated 10 January 2014 is under challenge in this Civil Revision Petition.

3.Heard the learned counsel for the petitioner and the learned counsel appearing on behalf of the respondents.

4.The petitioners filed the application in I.A.No.41 of 2011 only on the basis of the report submitted by the Court Amin, on the ground that delivery has already been taken and there were no huts in the property in question.

5.The learned Trial Judge has given a finding that the petitioner has already produced relevant documents to prove his possession and as such, there is no question of issuing a commission to prove the factum of construction of houses in the property. The report submitted by the Court Amin appears to have given the cause of action to the petitioner to file the application.

6.The petitioner wanted to prove that he is residing in the suit property by constructing a house. According to the petitioner, there are other six occupants, who are also in enjoyment of the property. The petitioner, in order to highlight the fact that there are occupants in the property in question filed I.A.No.41 of 2011

7.In view of the background facts, I am of the view that the petitioner should be given an opportunity to prove the existence of residential houses in the property in question.

8.In the result, the order dated 10 January 2014 is set aside. The application in I.A.No.41 of 2011 is allowed.

9.The learned Appellate Judge is directed to dispose of the appeal in A.S.No.3 of 2011 as expeditiously as possible.

10.The Civil Revision Petition is allowed as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

To The Subordinate Judge, Pattukottai.

?BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT %DATED: 29.06.2015 *CORAM THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN +C.R.P.(PD)(MD)No.230 of 2012 and #D.Mohammed Shereef : Petitioner Vs. \$1.V.V.Rajagopalan

2.The Official Receiver, District Court Campus, Trichy, Trichy District. : Respondents Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order made in I.A.No.525 of 2011 in O.S.No.150 of 2007, on the file of learned Additional District Judge (Fast Track Court No.1), Trichy, dated 03.12.2011.

!For Petitioner : Mr.R.Sundar ^For Respondent No.1 : Mr.G.R.Swaminathan For Respondent No.2 : No Appearance :ORDER The first respondent filed a suit in O.S.No.150 of 2007 before the learned Additional District Judge (Fast Track Court No.1), Trichy, against the petitioner and second respondent herein.

2. The petitioner, after appearance, filed an application in I.A.No.525 of 2011, contending that before filing the suit, the first respondent should have obtained permission from the Insolvency

Court, in view of his plea that he is an insolvent and an application is pending before the concerned Court. The application was dismissed by the learned Trial Judge on the ground that insolvency petition was filed only after instituting the suit. The said order is under challenge in this Civil Revision Petition.

3. Heard the learned counsel for the petitioner and the learned counsel appearing on behalf of the first respondent.

4. The factual matrix indicates that even before filing the suit in O.S.No.150 of 2007, the petitioner filed an insolvency application. It was filed on 09 May, 2007. The learned Trial Judge appears to have carried away by the wrong date given by the petitioner in his affidavit filed in support of the application. The records now produced before this Court clearly show that the insolvency application was filed on 09 May, 2007. Under such circumstances, I am of the view that the matter requires fresh consideration by the learned Trial Judge.

5. In the result, the order dated 03 December, 2011, is set aside. The application in I.A.No.525 of 2011, is restored to file. The learned Trial Judge is directed to consider the matter afresh on merits and as per law.

6. The Civil Revision Petition is allowed as indicated above. No costs. Consequently, the connected miscellaneous petition is closed.

To The Court of Additional District Judge (Fast Track Court No.1), Trichy.