

Seethalakshmi vs State Of Tamil Nadu And Ors. on 17 October, 1989

Equivalent citations: 1991CRILJ1037

Author: M. Srinivasan

Bench: M. Srinivasan

ORDER

1. This case discloses a lamentable state of affairs. A tale of woe has unfolded itself revealing how the principal characters who are high ranking police officials in charge of the District of Coimbatore in the matter of enforcement of law discharge their sacred duty in a cavalier fashion with a deep sense of irresponsibility and an obdurate disinclination to see the obvious ever ready to take shelter under the slogan 'it is a Civil dispute'. The denouement is reached within the precincts of this Court on the pulpit of Art. 226 of the constitution of India when the officers filed their counter affidavits which do not suffer from any vice other than 'suggestion falsi suppressio veri'.

2. Here are the facts which bear out the remarks made above. The writ petitioner sent a written complaint to the Deputy Inspector General of Police, Coimbatore the third respondent herein, on 27-3-1989. The gist of the complaint is as follows :-

"Grave injustice has been done to the petitioner and her family by Coimbatore Police Officers Thiru Muthuswamy, D.S.P., Thiru Nazimuddin and Thiru Madhavan B-3 Police Station Inspectors. On the basis of a false complaint made by Balasubramanian of Baba Theatre, the petitioner's husband" was arrested on 19-2-1989 in spite of anticipatory bail having been obtained by him in the High Court and was kept in the Police Station for a day and a half and ill-treated and thereafter confined in the Central Jail, Coimbatore. On 21-2-1989 when the petitioner was in her sister-in-law's place in Chittalancherry, Palghat Taluk, the petitioner and her sister-in-law were arrested by Coimbatore Inspector Thiru Madhavan and other Police people who came along with Baba Complex Bala-subramanian, Coimbatore D.M.K. leader Thiru Prabhakaran and they were taken to a dingy house in the outskirts of Coimbatore in garden, where they were illtreated and their signatures obtained on blank papers. Thereafter, on 24-2-1989 at 3 a.m. they were taken to B-3 Police Station, Coimbatore and the office of the D.S.P., Coimbatore and illtreated 23-2-1989 evening the petitioner's husband was brought to B-3 Police Station and all of them were taken to the office of the D.S.P. and under threat they were "compelled to sign an agreement for sale in favour of Rangasamy, an employee of Baba Theatre and Murugesu Gounder, a creditor of the petitioner's husband, for a sum of Rs. 9,00,000/- as if they had received a sum of Rs. 7,50,000/- in cash. The petitioner had filed C.S. No. 175 of 1989 in this Court that the agreement was not valid. As there

was danger to the property and life of the petitioner, she could not go to Coimbatore and she was staying in Madras. She filed an application in the High Court to appoint an advocate Commissioner to take an inventory of the articles in her house at Coimbatore, lock the house and deposit the key in the Court. On 3-3-1989 Thiru Haja Naziruddin was appointed as Commissioner by the Madras High Court to take an inventory of the articles in the house and to find out who was in possession of the same. On 4-3-1989, the Commissioner inspected the house in the morning and took an inventory of all the articles and also noted that the petitioner's son and other relatives were in the house. He filed a report in the High Court to that "effect. On 4-3-1989 in the night, a Police party along with an army of goondas went to the petitioner's house and found the relatives and servants of the petitioner and removed them along with all the articles in the house without any exception in a van and 4 or 5 lorries. Thereafter, Balasubramanian and goondas occupied the house. The petitioner has got documentary evidence to prove the same and desired to meet the addressee in person and place the evidence before him. There is danger to the life of the petitioner, her husband and her son and there is a threat that the entire family will be wiped off. As big police officials are threatening the petitioner and her family, they have taken refuge under the addressee. The petitioner does not believe anybody else and prays for protection for herself and her family. The petitioner or her husband is not in a position to go to Coimbatore and file any proceeding in Court as there is no protection for them in Coimbatore. The petitioner prays for return of all "the articles taken away by Balasubramanian, the police party and the army of goondas from their house on 4-3-1989".

3. That was followed by a personal meeting of the petitioner's counsel with the third respondent and a copy of the same complaint was also handed over to him. There being no information or indication of the action taken on the complaint, the petitioner's counsel sent a letter on 7-6-1989 to the third respondent that he had no information of the action taken by the latter and requested him to cause the furnishing of the file number of the case etc. There was also a hint in the letter that the writ Court will be moved, if needed. That letter reached the third respondent admittedly on 9-6-1989. But, the petitioner continued to be kept in dark without any information of the action taken on her complaint. Hence, the petitioner was obliged to move this Court under Art. 226 of the Constitution of India with a prayer for issue of a Mandamus to the second respondent to initiate at once appropriate enquiry and investigation into the complaint of the petitioner against respondents 4 to 9 as contained in the written complaint dated 27-3-1989 submitted to the third respondent annexed as Annexure A to the writ petition. The first respondent in the writ petition is the State of Tamil Nadu represented by the Chief Secretary to the Government. The second respondent is Director General of Police, Tamil Nadu. The third respondent is the D.I.G. of Police, Coimbatore. Respondents 4 to 6 are the parties at whose instance, according to the petitioner, the police committed the atrocities mentioned in her complaint. Respondents 7 to 9 are the Deputy Superintendent of Police, Coimbatore and Sub-Inspector of Police, B-3 Police Station, Coimbatore, respectively.

4. Notice of motion was ordered on 21-6-1989 returnable in two weeks. Respondents 1 to 3 entered appearance on 28-6-1989. The other respondents entered appearance shortly thereafter. The case was heard by Bhakthavatsalam, J. on 6-9-1989. He felt that the matter should be heard by me as I had dealt with the civil dispute between the petitioner on the one hand and respondents 4 to 6 on the other, on the original side and as a contempt application was pending before me relating to the same matter. At his instance, the papers were placed before the Officiating Chief Justice who directed the writ petition to be posted before me with the contempt matter. When the matter was heard by me on 26-9-1989 it was found that the Government Pleader representing respondents 1 to 3 did not have any record and that no counter affidavit had been filed by the said respondents. I dictated an order in open Court criticising respondents 1 to 3 for not placing the relevant records with the Government Pleader to be produced before the Court. However, I had to adjourn the matter to another date to enable the writ petitioner to file a supplemental affidavit explaining an omission in the affidavit filed in support of the writ petition. Before the order could be typed by the stenographer, the Government Pleader made a representation in Court that the person who brought the records from the office of the second respondent contacted some other Government Pleader by mistake and returned without handing over the records to him and that it was a bona fide mistake. Accepting his representation, I posted the matter to 28-9-1989 in my chamber and after informing all the advocates on record, I altered that portion of the order which contained the criticism against respondents 1 to 3 for non-production of records. The order was typed only thereafter. I had adjourned the matter to 3-10-1989 and directed respondents 1 to 3 to produce the relevant records before Court, and if necessary, file an affidavit explaining the facts. It was only at that stage, the third respondent thought fit to file a counter affidavit which was presented in Court on 5-10-1989 when the case was called. I had referred to the above facts only to point out the indifferent attitude taken by the third respondent, who is the only person responsible to place the relevant facts before this Court as the complaint in the writ petition is that no action had been taken on the petitioner's written complaint dated 27-3-1989 submitted to the third respondent. In spite of the fact that appearance had been entered in the writ petition as early as on 28-6-1989 by respondents 2 and 3, neither of them gave any serious thought to this proceeding under Art. 226 of the Constitution of India relating to an indictment made against some senior Police officials of Coimbatore.

5. What is more surprising, if not shocking, is that the counter affidavit born after a gestation period of three months, contains blatantly false statements, inconsistent averments and versions contrary to those found in the counter affidavits filed earlier by the other police officials. The pith and substance of the counter affidavit filed by the third respondents is that the complaint given by the petitioner on 27-3-1989 and the other complaints made by her were forwarded to the Superintendent of Police, Coimbatore Urban, who caused an enquiry to be held by the Inspector, District Special Branch, Coimbatore and at the conclusion of the enquiry submitted a report that the contents of the petitioner's complaint were not true and opined that no further action need be taken on the complaint. Before catalogueing the false statements made in the affidavit of the third respondent, it will be better to refer to the materials culled out by me from the records placed before me.

6. It is seen from the records that a telegram was sent to the third respondent on 5-3-1989 by the petitioner, the text of which reads as follows :-

"On 4-3-89 night 10 p.m. my house 55 SRP Nagar, Coimbatore broken open by about sixty rowdies with police aid removed all articles furniture vessels including gold ornaments all worth Rs. six lakhs in one lorry, one van and one Maruthi car stop my mother aged 77 and servant Kannan aged 18 kidnapped. Their fate not known stop I am at Madras got information over phone from relatives Rajan and Gopalakrishnan stop one Balasubramanian of Baba Complex, Coimbatore and Murugesan of Geethalaya Theatre, Coimbatore arranged this. Pray immediate enquiry stop already I filed C.S. No. 175/89 against these two persons High Court Madras stop Commissioner appointed by Court had visited house taken inventory 4th March morning stop Entire Police Coimbatore including top officers against me aiding opposite parties. Pray Enquiry by IC or DIG stop Me my husband afraid entering Coimbatore MRS Seetalakshmy".

Another telegram was sent to the second respondent. The former telegram was forwarded by third respondent to the Superintendent of Police, Coimbatore, for enquiry and report on 6-3-1989. He in turn forwarded it to the Deputy Superintendent of Police who sent it to the Inspector, B-2, Police Station for enquiry and report. On the back of the telegram, there is an endorsement that a report was submitted after compliance. The endorsement bears some initials and the date 18-5-1989. The telegram sent to the second respondent was forwarded to the third respondent on 22-3-1989 and it was received in the third respondent's office on 31-3-1989. Obviously, no action was taken thereon, as the earlier telegram addressed to the third respondent had been forwarded to the Superintendent of Police. The second respondent sent a communication to the third respondent on 10-5-1989 with the complaint given by the petitioner to the Chief Ministry of the State, requiring him to enquire immediately and send a report within five days. There was a warning that even if there was a delay by one day, action would be taken against the persons concerned. That was received by the third respondent on 15-5-1989, and forwarded to the Superintendent of Police on 18-5-1989 calling for a report before 21-5-1989 without fail. There were reminders by the third respondent to the Superintendent of Police on 24-5-1989 and 30-5-1989 requiring him to send his report immediately in order that a report may be sent to the CM Cell.

7. The petitioner had given a complaint on 15-3-1989 to the Inspector General of Police, Madras, containing the same allegations as found in the complaint dated 27-3-1989 made to the third respondent. In fact, the petitioner's husband has referred to the same in paragraph 6 of his affidavit filed in support of the writ petition. It is stated therein that on 15-3-1989 a complaint in writing was submitted to an Inspector General of Police, one Mr. Dorairaj who was later met by the deponent's counsel and who asked the counsel to go to Coimbatore and meet the third respondent personally. The complaint handed over to the Inspector General of Police, Madras, was forwarded to the third respondent, who sent it to the Superintendent of Police on 10-4-1989 calling for a report from the latter. Thus, the Superintendent of Police had with him the telegraphic complaint as well as the written complaint given to the Inspector General of Police, Madras, and the complaint addressed to the Chief Minister of the State. Though he was directed to submit his report before 21-5-1989 by the third respondent, the Superintendent of Police, Coimbatore, did not prepare his report till 27-5-1989. A report dated 27-5-1989 was sent by the Superintendent of Police to the third respondent and the latter received it on 30-5-1989. As per the report, the statement of the petitioner

could not be recorded as she was not available at Coimbatore and confidential enquiry revealed the following facts :-

Thiru. P. K. Unni was residing at Door No. 55, S.R.P. Nagar, Coimbatore. He was a film producer having his office at No. 17, 3rd Street, Habibullah Road, Madras. He had taken loan from Balasubramaniam, Managing Director, Baba Films, Coimbatore" and K. Murugesan, Managing Partner, M/s. Murugesan Enterprises, Financiers and Exhibitors, Coimbatore and also from Thiru. Velavendan, Ex.-Minister, Madras and producing films. Subsequently neither he produced the films nor return the loans to the above parties. On 31-1-89 at 18.15 hrs. a case in B-3 Kattoor P.S. Cr. No. 219/89 under section 420, I.P.C. was registered on the complaint preferred by Balasubramaniam, Managing Director, Sri Baba Films, No. 1 Gopalapuram 2nd Street, CBE, by sub-Inspector Thiru. Subramaniam B-3 Crimes. The complaint is that a cheque for Rs. 2 lakhs issued by P. K. Unni to Balasubramaniam towards the dues in film business transaction was dishonoured in the South Indian Bank Limited, Mylapore, Madras 12-10-88. On 20-2-89 at 05.30 hrs. at 55 S. R. P. Nagar, Coimbatore the said Unni was arrested by Tr. Ramamoorthy, Sub-Inspector of Police B-3 Crime and he was remanded to judicial custody on the same day. It is true that the said P. K. Unni obtained an anticipatory bail in the High Court, Madras on 2-1-89 for the case in Cr. No. not known of 1989 on the file of Inspector B-2 Police Station, Coimbatore. He came out on bail on 23-2-89.

"On 20-2-89 at 22.00 hrs. on the complaint of Balasubramaniam M. D. Sri. Baba Films, Coimbatore against P. K. Unni, his son Dileesh and Seethalakshmi and 2 others, a case in B-3 Kattoor P.S. Cr. No. 327/89 under section 342, 347, 364, 365, I.P.C. was registered for abducting the Accountant Remanathan on 19-2-89 in the Car when Balasubramaniam and Ramanathan, the Accountant approached Unni and his family members to settle the issue on the request made by Unni over phone.

On 21-2-89, S.I. Tr. A. K. Madhavan of B-3 Kattoor Law and Order Police Station with PC 991 Muthu and W.P.C. 1804 Rejeswari and 1714 Jayadevi visited Citalanjeri, Palghat district and brought Seethalakshmi, her sister-in-law Kalyani to B-3 Kattoor P.S. at 16.00 hrs. On 21-2-89, Dileesh Kumar, s/o. Unni also came to B-3 Kattoor P.S. by that time. Then the Sub-Inspector questioned them and sent them out subsequently.

On 23-2-89 Tr. K. K. Muthusamy, D.S.P., L&O enquired into the matter on the petition given by Balasubramaniam and Murugesan with Unni and others. "During the enquiry it reveals that it is a civil dispute about the money transaction. Hence D.S.P. advised the parties to settle the issues either among themselves or in the Court of law. They effected a compromise among themselves in the presence of lawyers representing all the parties and a deed was executed. The commissioner Tr. Khaja Nizirudeen appointed by the High Court, Madras visited the place on 4-3-89 and he would have submitted a report to the High Court. On 4-3-89 night Balasubramaniam

took possession of the house and no police party neither accompanied Balasubramaniam nor helped him in taking possession of the house.

Result : The contents of the petition are not true. The agreement was prepared and accepted by both the parties will-fully and there is no foul play. Further a civil suit is also pending in the High Court over the issue. As such no further action need to be taken on the petition. The Range Office original references are retransmitted herewith."

8. The third respondent was not satisfied with the report. He returned it to the Superintendent of Police immediately with the following endorsement dated 1-6-1989 :-

"Retd.

(i) The S.P. will send for the petitioner, examine her and record her statement as told by her.

(ii) He will also examine other connected persons.

(iii) He must also go through the records/ documents if any in this episode (relating to dispute between the petitioner and one Baba complex.

(iv) Pl. see that a fair enquiry is made and report sent at the earliest."

9. After getting back the report with the above endorsement containing specific directions, the Superintendent of Police sent a report on 4-6-1989 to the third respondent as if a separate enquiry was held with reference to the telegraphic complaint dated 4-3-1989. That report is in the following terms :-

"Inspector of Police, Bs (L&O) P.S. conducted an enquiry on the allegations made in this telegram. Enquiry reveals that the petitioner is having her own house at Dr. No. 55, S.R.P. Nagar, Coimbatore which is in "R. S. Puram P.S. limits. Cases have been registered against the petitioner and her husband both in B-3 L&O and crime Police Stations. It is learnt that the petitioner's husband owed some lakhs of rupees to the counter petitioners, Balu and Murugesu Gounder, for which a Panchayat was held. Then the petitioner herself vacated the premises and gave it for the counter-petitioner's possession. Subsequently, on consulting her advocates, she sent up this telegram, alleging that her mother and servants were forcibly evicted from her residence. Now this dispute is pending in the High Court, Madras. Under these circumstances this telegram needs no further action."

10. I have already referred to the fact that the petitioner's counsel's letter dated 7-6-1989 addressed to the third respondent was received by him on 9-6-1989. According to the third respondent's counter affidavit, that was forwarded to the Superintendent of Police, for necessary action and

report on 10-6-1989. Thus, on 10-6-1989, the Superintendent of Police, Coimbatore, had with him not only the records previously sent to him but also the letter of petitioner's counsel dated 7-6-1989 and the documents enclosed therewith. It is necessary to point out here that the following documents were enclosed with the petitioner's counsel's letter dated 7-6-1989 :-

1. Copy of complaint dated 4-4-1989.
2. Copy of report and list filed by advocate Commissioner.
3. Copy of High Court judgment in application for redelivery of house.
4. Detailed list of articles and statement of value.

The receipt of these documents cannot be disputed as they are found among the records produced by the third respondent before this Court.

11. It should also be mentioned at this stage that on 29-4-1989 the advocate Commissioner appointed by me to redeliver possession of the house to the petitioner with the aid of the police had approached the Superintendent of Police, Coimbatore with a request to depute personnel to help him in taking possession of the house and delivering it to the petitioner. The Superintendent of Police had instructed the Deputy Superintendent of Police to do the needful and directed the advocate-Commissioner to meet the Deputy Superintendent of Police, who is the 7th respondent herein. The 7th respondent deputed one Inspector by name Mr. Chinnasamy from the Control Room and seven constables. What happened thereafter is not relevant for the purpose of this case. I have referred to these facts only to show that the Superintendent of Police was well aware of the developments in the civil suit filed by the petitioner against respondents 4 to 6 and the orders passed by me on 28-4-1989.

12. On 12-6-1989, the third respondent called upon the Superintendent of Police to expedite his report immediately as an urgent report to CM's Cell was being held up. In reply thereto, the Superintendent of Police informed the third respondent by communication dated 15-6-1989 which was received by the third respondent on 19-6-1989 that a Sub-Inspector of Police from District Special Branch, Coimbatore Urban had been directed to Madras to obtain a written statement from the petitioner herein and on receipt of the same, the report will be sent to the third respondent shortly. On 21-6-1989, the following report is sent by the Superintendent of Police to the third respondent and received by him on 22-6-1989 :-

"The petitioner Smt. Seethalakshmi is not available at Madras in the address, furnished by her in the petition. It is ascertained from the house owner that she left for "Coimbatore vacating the house at Madras about 5 months back. She is not now residing in her house at Coimbatore which was taken in possession by the counter petitioner on the Court orders. Her whereabouts are not known as such her statement could not be recorded. Since this is a civil dispute petitioner has to seek remedy through the Court only. In these circumstances it is opined that no further

action needs to be taken on this petition."

On the basis of the said report, the third respondent sent a report to the second respondent, the relevant portion of which reads as follows :-

"This petition was enquired into by the Inspector District Special Branch, CBE Urban. His discreet enquiry concluded that the allegations levelled by the petitioner are false. The petitioner's husband Tr. Unni has been arrested on 20-2-89 and sent for judicial custody on the same day on a complaint preferred by the CP. Tr. Balasubramaniam "dealt in B-3 Kattur PS Cr. No. 219/89 under section 420 I.P.C. On 21-2-89, on another complaint of abduction preferred by the CP dealt in B-3 Kattur PS Cr. No. 327/89, under section 342, 347, 364, 365, I.P.C., the petitioner her son and sister-in-law have been arrested and let off subsequently. On 23-2-89, as per the advise of the DSP-City L&O both the parties effected a compromise among themselves in the presence of lawyers representing all the parties and a deed was executed. On 4-3-89 night, the CP occupied the house and no police party either accompanied the CP nor helped him for taking possession of the house.

The petitioners statement could not be recorded since her whereabouts are not known. Since the allegations levelled in this petition are false and moreover it is a civil dispute no further action need be taken on this."

13. Records produced before me do not disclose the names of the persons who were enquired and whether any statement was recorded from any person by the Inspector who is supposed to have held the enquiry. The enquiry is described as confidential in one place and discreet in another place. One is to wonder whether it is so confidential that the Superior Officials of the Department are not entitled to know the materials on the basis of which the report is prepared. Is it so confidential that those materials should not be placed before the Court exercising powers under Article 226 of the Constitution of India and the Court being taken into confidence by the Police Officials ? In my view, a reading of the three reports dated 4-6-1989, 27-5-1989 and 21-6-1989 made by the Superintendent of Police to the third respondent on the strength of which the third respondent had forwarded his report to the second respondent shows that no enquiry was really held by the Inspector of Police and whatever enquiry was held for the sake of appearance was truncated, inchoate and slipshod. The enquiry was not held with a view to find out the truths. But, it was done with a view to submit a report on the lines drawn already. While the report dated 4-6-1989 states that the petitioner herself vacated the premises and gave it to the counter petitioners' possession pursuant to a panchayat, the report dated 27-5-1989 contained the version that a compromise was effected in the presence of lawyers representing all the parties and a deed was executed, but strangely Balasubramaniam took possession of the house on 4-3-1989 night after the advocate-Commissioner visited the place and took an inventory of the articles found in the house. The moment it is found that Balasubramaniam took possession on 4-3-1989 night, any child would ask the question "why did he take possession in the night ?" But, that did not occur to the senior police officials. According to the report dated 27-5-1989 a compromise was effected on 23-2-1989 in the presence of the Deputy Superintendent of Police, though it is not stated so expressly. The report dated 4-6-1989 refers to a panchayat and it

does not refer to the compromise mentioned in the earlier report of 27-5-1989. It is not the case of respondents 4 to 6 in C.S. No. 175 of 1989 in which they are defendants 1 to 3 that there was any panchayat or compromise as a result of which an agreement for sale was entered into by the petitioner herein, who is the plaintiff in that suit. Nor is it the case of respondents 4 to 6 that possession was taken by the 6th respondent on 4-3-1989. According to them, possession was with respondents 4 and 5 from 24-2-1989 when a portion of the house was delivered by the petitioner and from 26-2-1989 when the rest of the house was delivered to them. I wonder how the police officials got the information that the 6th respondent took possession on 4-3-1989. That fact itself should have put them on the trail and they should have continued the investigation. It is rather strange that they did not smell a rat when they caught hold of the information that the 6th respondent took possession on 4-3-1989. Stranger is the statement found in the last report dated 21-6-1989 that the petitioner was not available at Madras and her whereabouts were not known. As pointed out already, the third respondent as well as the Superintendent of Police had with them the letter of the petitioner's counsel dated 7-6-1989, which displayed his phone number. The easiest thing for them was to have contacted the petitioner's counsel by phone and ascertained the whereabouts of the petitioner. It should be noted that this writ petition was filed on 21-6-1989, the date borne by the last report of the Superintendent of Police, Coimbatore.

14. Now I shall revert to the counter affidavits filed by the third respondent and respondents 7 to 9. Though it is not necessary for me to make any reference to the counter affidavits of respondent No. 4 and respondent No. 6, it is to be noted that there is no averment in either of them to the effect that the sixth respondent took possession on 4-3-1989 night or there was a compromise Or panchayat between the petitioner and respondents 4 to 6. In paragraph 3 of the counter-affidavit of the third respondent, he denies knowledge of the anticipatory bail obtained by the petitioner's husband on 2-2-1989. The denial is clearly false as there is an express reference to the anticipatory bail in the complaint made by the petitioner on 27-3-1989. The report dated 27-5-1989 admits the factum of anticipatory bail obtained by the petitioner's husband. Secondly, the third respondent asserts categorically that the petitioner's husband was never arrested by the Sub-Inspector of Police, B-3 Police Station, Law and Order, i.e., the 9th respondent. The fact that the petitioner's husband was arrested by the Sub-Inspector of Police B-3 Police Station is admitted by respondents 8 and 9 in their counter-affidavits, though according to them the person who actually arrested him was not the 9th respondent but a Sub-Inspector who was temporarily in charge as respondents 8 and 9 had gone on leave on the relevant date. The third respondent may try to take shelter under a technicality that his statement pertained only to an arrest by the 9th respondent. It is not fair on the part of a high official like the third respondent to make an assertion that the petitioner's husband was never arrested by the Sub-Inspector of Police, B-3 Police Station when the records produced by him and the counter-affidavits filed by respondents 8 and 9 prove to the contrary. It is his duty to place the facts correctly and fully before this Court. Thirdly, in one place of the affidavit the third respondent denies that the 8th and 9th respondents along with respondents 4 and 6 were in the office of the 7th respondent on 23-2-1989, while in the same paragraph a little later it is admitted that the 7th respondent sent for the fourth respondent when the petitioner's husband met him on 23-2-1989 at about 17.00 Hrs. along with his counsel and made a complaint against the sixth respondent. The version found in the counter-affidavit filed by the 7th respondent as to what happened on 23-2-1989 in his office differs from that found in the third respondent's counter. According to the 7th

respondent's counter, the fourth respondent and his counsel appeared before him on their own. Fourthly, the third respondent falsely asserts in two places in his counter-affidavit that the police have no knowledge of the civil suit initiated by the petitioner and of the visit of the Commissioner to the petitioner's house. Apart from the fact that the complaint dated 27-3-1989 makes a specific reference to C.S. 175 of 1989, the records produced by the third respondent in this Court contain sufficient materials to the effect that the police was made aware of the proceedings pending in this Court. In fact, one of the reasons given by the Superintendent of Police, Coimbatore and the third respondent for not taking further action in the matter is that it is a civil dispute as a suit is already pending. In spite of that, the third respondent makes bold to say in a solemn affidavit that the police have no knowledge of the suit.

15. In the counter-affidavit filed by the 7th respondent also there is a specific denial of knowledge of the civil suit between the petitioner and the 6th respondent. I have already referred to the fact that it was he who deputed Inspector Chinnasamy with seven Police constables to accompany the advocate-Commissioner to help him deliver possession of the house to the petitioner pursuant to my order dated 28-4-1989. I do not think it necessary to catalogue the differences in the versions put forward by the third respondent, the 7th respondent, the 8th respondent and the 9th respondent. Suffice it to point out that all the four police officials have not realised the solemnity of an affidavit and the purpose of the same.

16. This Court has on several occasions pointed out that affidavits should not be treated in a light-hearted fashion and prepared in a hap-hazard manner. Every litigant should understand that an affidavit is a sworn statement and it takes the place of deposition. Responsibility of Government officials is much more in this regard. Their affidavits are not intended just to point out the flaws in the case of the opponent. Their affidavits should always place all the facts before the Court whether such facts would support the contention of the Government in the case or not.

17. The procedure for investigation of an offence by the police is found in Chapter XII of the Code of Criminal Procedure. Section 154 of the Code of Criminal Procedure confers power on a police officer whenever he receives information as to the commission of a cognizable offence, to enter the substance thereof in a book kept by him for that purpose in the prescribed form. The officer referred to in the section is the officer in charge of a police station. Section 156 of the Code of Criminal Procedure deals with investigation into cognizable offences and empowers the police officer to do so without an order of Court. Section 157 of the Code of Criminal Procedure states that if from the information received or otherwise, a police officer has reason to suspect the commission of a cognizable offence he should send forthwith a report of the same to the Magistrate empowered to take cognizance of such offence upon a police report and then proceed in person or depute one of his subordinate officers to proceed to the spot, to investigate the facts and circumstances of the case and if necessary, to take measures for the discovery and arrest of the offender. Section 173 enjoins the police officer to complete the investigation without unnecessary delay and as soon as it is completed forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the prescribed form setting forth the names of the parties, the nature of the information and the names of the persons who appear to be acquainted with the circumstances of the case. He is also required to state whether the accused had been forwarded in custody or had been released on bail.

On receipt of the report submitted under S. 173(2) of the Code, the Magistrate empowered to take cognizance of an offence, might take cognizance of the same under S. 190(1)(b) of the Code. If the Magistrate is satisfied that there is sufficient ground for proceeding further, he is required to secure the attendance of the accused. If, on the other hand, it appears to the Police Officer that there is no sufficient ground for entering on an investigation, he shall not investigate the case. However, he is bound in either case to notify to the informant in such manner as may be prescribed by the State Government the fact that he will not investigate the case or cause it to be investigated. Under S. 173(8) of the Code, notwithstanding the fact that a report had already been forwarded to the Magistrate under S. 173(2) of the Code, it will be open to the police officer to make further investigation in respect of an offence, if circumstances so warrant. As and when such investigation is made and further evidence, oral or documentary, is obtained the police officer is duty bound to forward a further report or reports to the Magistrate regarding such evidence in the form prescribed. Thus, under the Criminal Procedure Code, investigation consists generally of the following stages : (i) proceeding to the spot; (ii) ascertainment of facts and the circumstances of the case, (iii) discovery and arrest of the suspected offender; (iv) collection of evidence relating to the commission of the offence which may consist of (a) examination of various persons including the accused and the reduction of their statements in writing, if the officer thinks fit, (b) search of places and seizure of things considered necessary for investigation and to be produced at the trial, and (v) formation of opinion as to whether on the material collected there is a case to place the accused before a Magistrate for a trial and if so taking the necessary steps for the same by filing charge sheet under S. 173(1) of the Code. The object of the investigation being to collect evidence, the investigating officer has to do all things necessary which he considers relevant and material without committing breach of the mandatory provisions of the Code of Civil Procedure. The investigating police are primarily the guardians of the liberty of innocent persons and a heavy responsibility devolves on them of seeing that innocent persons are not charged on irresponsible and false implication. It is of the utmost importance that people entrusted with the investigation must be scrupulously honest and efficient, otherwise cases both of innocent persons being wrongly convicted and of really guilty persons being wrongly let off are likely to occur. It is the duty of the investigation officer to discover the truth and make a relentless pursuit for the truth. Investigation cannot be merely mechanical, and it must be an intelligent one. The police in conducting the investigation must act in such a way as to inspire full confidence in everybody concerned. If upon the completion of the investigation it appears to the police officer that there is no sufficient evidence or reasonable ground, he may decide to release the suspected accused, if in custody. If, however, it appears to him that there is sufficient evidence or reasonable ground to place the accused on trial, he shall take necessary steps therefor under section 170 of the Code. In either case, on the completion of the investigation, he has to submit a report to the Magistrate under section 173 of the Code in the prescribed form furnishing such details. Thus, the procedure prescribed by the Code enjoins the Police Officer to file a report before the concerned Magistrate and also inform the complainant even if the police officer comes to the conclusion that no case has been made out on the materials collected by him.

18. Standing O.584 of the Madras Police Standing Orders, prescribes the following grounds for refusal to investigate :- (a) triviality, (b) civil nature, (c) petty thefts, (d) injured person does not wish enquiry, (e) undetectable simple cases and (f) exaggerated assaults. As regards the ground (b), the cases must be clearly of a civil nature, or in which the complainant is obviously endeavouring to

set the criminal law in motion to support a civil right. Standing Order 588 provides that the investigation officers are warned against prematurely committing themselves to any view of the facts for or against a person and that the aim of an investigating officer should be to find out the truth and to achieve this purpose, it is necessary to preserve an open mind throughout the inquiry. Under Standing Order 686, in cases disposed of under sections 175 and 157(b) of the Code of Criminal Procedure, the Police have to serve a notice in Form No. 100 on the complainant or informant and forward the duplicate duly endorsed with the final report to the concerned Magistrate or Commissioner of Police, Madras. Procedure is also prescribed when the complainant or informant is not directly concerned with a case.

19. In this case, according to the complaint dated 27-3-1989 made to the third respondent, by the petitioner, cognizable offence have been committed by respondents 4 to 9. It is the duty of the third respondent to have made an investigation in accordance with law. It is seen from the facts stated already that the procedure prescribed in Chapter XII of the Code of Criminal Procedure has not been followed in this case. It was faintly argued that the procedure prescribed in Chapter XII would apply only to complaints made to an officer in charge of a police station. The argument is without any substance. S. 36 of the Code of Criminal Procedure empowers police officers superior in rank to an officer in charge of a police station to exercise the same powers throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station. In some cases, it has been held that the section uses the word 'may' and not 'must' and that the superior officers are not compelled to exercise the powers. (vide *Chittaranjan Das v. State of West Bengal* and *Emperor v. Maturanath De* AIR 1932 Cal 850. I do not agree with the view taken by the Calcutta High Court in those cases. In the case of cognizable offences, it is the duty of every police officer, whether he is in charge of a police station or a superior officer, to make an investigation if and when he receives information about the commission of such an offence. If he is not inclined to exercise the power conferred on him under section 36 of the Code, he should make arrangements to have the information recorded by the officer in charge of the concerned police station and investigation made. Particularly when it is alleged that the offences have been committed by the officials, in charge of the police station having jurisdiction over the concerned area or the immediately superior officials or that the offences have been committed with the complicity and connivance of the officials, it cannot be expected that the victim should register a complaint with the police station. Naturally in such cases, he would approach only higher officials and it is the duty of such officials to investigate or cause investigation to be made.

20. In *Devaiya v. State of Coorq* AIR 1956 Mys 51, it is held that it is not correct to say that police officers superior in rank to an officer in charge of a police station may or may not record information which is given to them regarding the commission of a cognizable offence, because to accept such a proposition may lead to absurdities and ultimately to failure of justice. It is also held that two courses are open to police officers superior in rank to an officer in charge of a police station, while information regarding a cognizable offence is reported to them, viz. (1) to record the information himself in cases where he intends to take action on the first information report and (2) to make arrangements to cause the production of the informant before the officer in charge of the concerned police station, so that the said officer may record the information as required under section 154 of the Code.

21. In *R. P. Kapur v. Pratap Singh Kairon*, it is held that S. 154 of the Code does not lay down that information of a cognizable offence can only be given to an officer in charge of a police station. In that case, a complaint sent to the Chief Minister of the State was forwarded to the Additional Inspector General of Police, who in turn sent it to the Deputy Superintendent of Police, C.I.D., for investigation. The Supreme Court held that both the Additional Inspector General of Police and the Deputy Superintendent of Police, C.I.D., were officers superior in rank to an officer in charge of a police station and jurisdictional area was the whole of the State, and consequently, the investigation was in accordance with the provisions of the Code and the procedure adopted was not unknown to law. At that time, the old Criminal Procedure Code of 1898 was in force and the section corresponding to the present S. 36 was S. 551. The judgment of the Supreme Court proceeds as if S. 551 imposed a duty on the superior officers to exercise their powers.

22. Placing reliance on the judgment of the Supreme Court, Ramaswami, J. held in *Palaniswamy v. Superintendent of Police, Rural, Coimbatore* (1983 Mad LW (Cri) 34 (Short Notes)) that if an informant approaches a superior police officer direct instead of going to an officer in charge of a Police station for whatever reason, it would be the duty of such superior officer to entertain and record that FIR under section 154 of the Code and start investigation under sections 156 and 157 of the Code.

23. In *State of Bihar v. J. A. C. Saldanna*, it was held that Inspector General, Vigilance, though only in charge of bribery and corruption cases, was an officer superior in rank to an officer in charge of a police station within the meaning of S. 36 of the Code of Criminal Procedure and was competent to take over the investigation of a cognizable offence registered at a police station.

24. In this case, there is no dispute that the third respondent is an officer superior in rank to an officer in charge of the police station having jurisdiction over the concerned area and when he exercises his power by virtue of S. 36 of the Code on the complaint made by the petitioner, is bound to follow the procedure prescribed in Chapter XII of the Code. It is already seen that the procedure has not been complied with in this case. No report has been sent to the concerned Magistrate; nor any notice has been sent to the complaint/ petitioner that there was no case for placing the accused on trial.

25. Learned Government Pleader appearing for respondents 1 to 3 contended that the complaint dated 27-3-1989 did not give full particulars of the persons who are said to have committed the offence. According to him, the names of the persons who formed the the police party or the army of goondas said to have accompanied the 6th respondent on the night of 4-3-1989 are not furnished in the complaint. The argument is stated only to be rejected. There cannot be a more fallacious argument than this. How could the petitioner be expected to give the names of the members of the police party and the army of goondas who accompanied the sixth respondent on that night ? To say the least, the contention is untenable. Apart from that, the Supreme Court has repeatedly pointed out that failure to mention the name of any assailant in the first information report would not be of any consequence if the circumstances of the case justified the same. (*Vide Pandurang v. State of Hyderabad and Bishan Dass v. State of Punjab*).

26. Another contention equally untenable was raised by the learned Government Pleader. According to him, the only remedy of the petitioner is to approach this Court under section 482 of the Code of Criminal Procedure and not to file a petition under Art. 226 of the Constitution of India for issue of a writ of Mandamus. S. 482 of the Code saves the inherent powers of this Court to make such orders as may be necessary to give effect to any order under the Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. That section does not in any way bar the invocation of Art. 226 of the Constitution of India.

27. The power to issue a writ of Mandamus in appropriate cases has been upheld and exercised repeatedly by this Court. (Vide A. S. V. Varadachariar v. Commr. of Police, Egmore, Madras (1969) 2 Mad LJ 1, Palaniswamy v. Supdt. of Police, Rural, Coimbatore) (1983 Mad LW (Cri) 34 (SN), and M/s. India Match House by Propr. Ejas, By Power of Attorney Agent, Muralidhar, T. Balani v. Commr. of Police, Madras (1988 LS (Cri) 288.

28. It would be advantageous to quote the following passage in the judgment of Salmon, L.J., in the famous case R. v. Metropolitan Police Commr. Ex. Parte Blackburn (1968) 1 All ER 763 at p. 771 :-

"In this court it has been argued on behalf of the commissioner that the police are under no legal duty to anyone in regard to law enforcement. If this argument were correct, it would mean that insofar as their most important function is concerned, the police are above the law and therefore immune from any control by the court. I reject that argument. In my judgment the police owe the public a clear legal duty to enforce the law - a duty which I have no doubt they recognise and which generally they perform most conscientiously and efficiently. In the extremely unlikely event, however, of the police failing or refusing to carry out their duty, the court would not be powerless to intervene. For example, if, as is quite unthinkable, the chief police officer in any district were to issue an instruction that as a matter of policy the police would take no steps to prosecute any house-breaker, "I have little doubt but that any householder in that district would be able to obtain an order of mandamus for the instruction to be withdrawn. Of course, the police have a wide discretion, whether or not they will prosecute in any particular case. In my judgment, however, the action which I have postulated would be a clear breach of duty. It would be so improper that it could not amount to an exercise of discretion."

The same view was expressed by Edmund Davies, L.J. in the same case :

"In this context counsel for the commissioner has addressed to the court an elaborate and learned argument in support of the bald and startling proposition that the law enforcement officers of this country owe no duty to the public to enforce the law. Carried to its logical limit, such a submission would mean that, however brazen the failure of the police to enforce the law, the public would be wholly without a remedy and would simply have to await some practical expression of the Court's "displeasure. In particular, it would follow that the Commissioner would be under no duty to prosecute anyone for breaches of the Gaming Acts, no matter how flagrantly and

persistently they were defied. Can that be right ? Is our muchvaunted legal system in truth so anemic that, in the last report, it would be powerless against those who, having been appointed to enforce it, merely cocked a snook at it ? The very idea is as repugnant as it is startling, and I consider it regrettable that it was ever advanced. How ill it affords with the seventeenth century assertion of Thomas Fuller that, "Be you never so high, the law is above you". The applicant is right in his assertion that its effect would be to place the police above the law."

29. Incidentally, it is very interesting to note the words with which the learned Judge began his judgment. They read as follows :

"It would be difficult to exaggerate the importance of these proceedings. "If there are grounds for suspecting that a grave social evil is being allowed to flourish unchecked because of a set policy of inaction decided on by a pusillanimous police force, public confidence must inevitably be gravely underminer."

30. No doubt, learned counsel for the respondents did not openly argue that this Court cannot issue a mandamus. But, the implication of the argument that the only remedy of the petitioner is to resort to S. 482 of the Code of Criminal Procedure is that no application for mandamus will lie or that this Court cannot issue a mandamus in the matter of investigation by the police. I have already referred to the relevant portions of the reports made by the Superintendent of Police to the third respondent and third respondent's report forwarded to the second respondent. There is a calculated attempt on the part of the third respondent and his sub-ordinate officials to shove off the case to civil Courts with the label 'civil dispute'. Police Standing Order 584 should not be misused by the police officers. The rule does not give a license to any party to a civil dispute to indulge in crimes. Cognisable offences alleged to have been committed with the connivance of police officials should be investigated fully with an open mind as required by Police Standing Order 588. It is highly essential that an impartial and full investigation is made in this case in which grave offences are attributed to police officials. If the officials want to be vindicated and confidence to be instilled in the public, the investigation must be done on the proper lines and all the relevant evidence must be collected for which unbiased police officials must be deputed. The third respondent has proved himself to be unfit to carry on the investigation, particularly in view of his report prepared mechanically and forwarded to the second respondent and his callous and careless counter affidavit filed in this case.

31. In the interests of justice, I direct the second respondent to nominate the Deputy Inspector General of Police (Intelligence) Madras to investigate the complaint of the petitioner dated 27-3-1989 in accordance with law. No officer who had any connection with this case earlier should take part in the investigation. Whatever I have said in this judgment is not a finding against respondents 4 to 9 that any of them is guilty of any of the offences alleged to have been committed by them. My endeavour has only been to emphasise that a proper investigation in accordance with law has not been made in this case. In the investigation to be held, no observation in this judgment should be treated as material for or against respondents 4 to 9.

32. A writ of Mandamus will issue directing the second respondent to nominate the D.I.G. (Intelligence) Madras, to investigate the complaint dated 27-3-1989 submitted by the petitioner to the third respondent in accordance with law. The second respondent is directed to take appropriate action against Thiru C. V. Rao, Superintendent of Police, Coimbatore for gross dereliction from duty. The registrar of this Court is directed to issue notice returnable in two weeks to the third respondent and the 7th respondent to show cause why they should not be prosecuted for filing false affidavits in this case. The writ petition is allowed as against respondents 1 to 3 and 6 to 9. There will be however no order as to costs.

33. Order accordingly.