

MEMORANDUM OF GROUNDS OF CRIMINAL ORIGINAL

PETITION

(U/s 482 of the Criminal procedure code)

IN THE HIGH COURT OF JUDICATURE OF MADRAS AT MADURAI BENCH

CrI.O.P.(MD).No. 10130 of 2010

In

Crime No. 161 of 2010

(On the file of the Respondent Police Station)

1	Gnanadiraviyam, M/40 years, S/o. Saminathan, Poonganagar, 1/5C, Thirubuvanam.	
2	Bharathi, F/26 Years, S/o Dhanu, 6A, Vallabai Raod, Chokkikulam, Madurai District. Petitioners / Accused No.1 to 6
3	Anandhan, M/25 years, S/o. Palani, 102, Anbu Nagar, Manamadurai.	
4	Nisarkapriya, F/23 Years, D/o Chitramaiyah, Thumber District, Karanataka State	
5	Sudha, F/22 Years, M/o Dhamalammal, Dhavangira District	
6.	Henry Tiphagne, M/55 Years, S/o Dr.Y.Tiphagne, 6A, Vallabai Road,	

	Chokkikulam, Madurai District	
	VS	
1.	State through its Inspector of Police, Veeravanallur Police Station, Tirunelveli In Crim No. 161 of 2010	... Respondent/ Complainant

PETITION FOR QUASH

The address of the service of the Petitioners are that of their Counsel M/s. CRAMESH, JOHN VINCENT, K.S. PANDIYARAJAN, Advocates, 89, Law Chamber, High Court Building, Madurai -23.

The address for service for the respondent is as stated above.

I. It is respectfully submitted that the petitioners are arrayed as accused No.1 to 6 in the above case on the file of the Respondent Police for the alleged offences under Section 170, 353, 416, 506 (i) I.P.C on the allegation that these Petitioners No.1 to 5 have entered into the Police Station without getting prior permission and stating that they are coming from a Human Rights Organization as per the instruction of the Government and that they want to enquire the de facto complainant regarding torture of one Suresh who was detained under Goondas Act and also that they requested them to produce the documents regarding the above named Suresh, that they had not shown their Identity Cards and threatened the defacto complainant and that they had come to the Police Station under the instruction of Mr. Henri Tiphagne who is the Petitioner No.6. The defacto complainant is a Sub Inspector of Police, Veeravanur Police Station who has preferred a complaint against the above named Petitioners before the Inspector of Police, Mukkoodal Police Station and the case was registered for the same.

2. It is submitted that the Petitioners No.1, 3 and 4 are graduates, while Petitioner No 2 is a graduate of law from the New York University School of Law and all of them are Human Rights Defenders, Petitioner No.6 is a practicing Advocate for the past 27 years registered with the Bar Council of Tamilnadu with Roll No 463/83, heading the following responsibility

- (i) Member of National Core Group on NGOs of the National Human Rights Commission of India,
- (ii) Executive Director of People's Watch, (a National Human Rights Organization with its headquarters in Madurai)
- (iii) Executive Committee Member of Forum Asia, a Regional Human Rights organization with ECOSOC status working in Asia with its* headquarters in Bangkok
- (iv) Executive Committee Member of the world Organization Against Torture (OMCT) an international human rights organization with ECOSOC status and
- (v) Member of the Working Group on Human Rights In India and the UN (WGHR).

3. Petitioners 1 to 5 were attending a National Training Program on Dalit Human Rights Monitoring conducted by Dalit Foundation and the training was facilitated by Petitioner No 6, at Pillar House in Nagamalai Pudukottai in Madurai from 11th to 20th August 2010. As a part of the training program, on the 5th and 6th days (15th and 16th August) the participants were divided into 13 human rights Fact Finding Teams and were

deputed to go for field work in different districts of Tamilnadu as part of their mandate as human rights defenders under Sec 6 of the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and protect universally Kecogruzeu nuiium Rights and Fundamental Freedoms 1998 .

4) The above named Petitioners No.1 to 5 who comprised one of the Fact Finding groups went to Veeravanallur village in Tirunelveli District and started monitoring a case of alleged police torture of a dalit youth that had been referred to them by the training facilitator. They collected materials from the family of the said Suresh who was detained under Goondas Act. Except the above named Petitioners 1 to 5 teams all other Fact Finding Teams met several government officials including District Collectors and other senior officers, met victims, witnesses, alleged perpetrators and prepared their draft fact finding team reports in their respective cases successfully.

5. It is submitted that the Respondent Police in order to seize the materials collected against the Police regarding said Suresh case by the petitioners 1 to 5 have foisted a false case against Petitioners/Accused and they were remanded into Judicial Custody on the same night of the 15th August. The alleged perpetrators of the torture of Suresh were police personnel attached to the Superintendent of Police Tiruneiveli District. It is submitted that Petitioner No.6 who has been referred to as an absconding accused has been very much available for interrogation, also responded to the notice of the respondent dated 19th was received on 21st and appeared before the respondent on 23rd at Veeravanallur Police Station. The 6th petitioner gave a detailed statement before the Respondent Police on 23.08.2010

6.It is submitted that the 6th petitioner moved Anticipatory Bail before this Hon'ble Court in CrI OP No. 9606/2010 and this Hon'ble Court was pleased to grant the same on 24.10.2010.

GROUNDNS

A) The FIR does not disclose any cognizable offences. The ingredients and the allegations contained in the FIR do not constitute any prima facie case against any of the Petitioners.

B) The complaint does not disclose even the date and time of occurrence when the complainant is a Sub Inspector of Police. In these circumstances, the respondent police ought not to have registered the case.

C) It is submitted that the overt act by the Petitioners has not been mentioned in the complaint given by the defacto complainant The FIR is further self contradictory. There is no offence made out against the Petitioner No.6 since even as per FIR and there are no materials available to include the Petitioner No.6 in the FIR as an accused.

D) In the FIR given by the de-facto complainant it has not been mentioned how they had actually impersonated as Government officials and even as per the complaint the Petitioners have not stated that they are the Government officials and they have not impersonated as a public servant. So the offence under Section 170 IPC has not been made out against the Petitioners.

E) It is submitted that as per the FIR in this case it has not been mentioned how the Petitioners were disturbing the defacto complainant from discharging her duty and she has not mentioned how she was obstructed from execution of her duty. Hence the offence under Section 353 IPC has not been made out against the Petitioners.

F)Section 416 of IPC is as follows:-

"A person is said to "cheat by personation" if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a nerson other than he or such other person really is."

Explanation- The ortence is committed whether me individual personated is a real or imaginary person.

It is submitted that the FIR does not mention about the Criminal intimidation of the Petitioners. Section 506 (i) of IPC is as follows (whoever commits the offence of criminal intimidation.- Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both)

As held by the Hon'ble jurisdictional High Court in 1989 CrI LJ 669 the threat and intimidation should be a real one and not just a mere word when the person uttering it does exactly mean what he says.....

G) The Respondent failed to note that this case is motivated since the alledged perpetrators of the police torture were police personnel attached to the SP CID. The FIR has been filed only to harass the petitioner for an occurrence that is said to have been taken place as alleged by the de-facto complainant.

It is therefore prayed that this Hon'ble court may be pleased to stay all further proceedings in Crime No.161 of 2010 on the file the Respondent Police, pending disposal of above Criminal Original Petition and pass such other orders as this Hon'ble court may deem fit and thus render justice.

It is therefore prayed that this Hon'ble Court may be pleased to call for the records relating to the Crime No.161 of 2010 pending on the file of the Respondent Police and quash the same and thus render justice.

Dated at Madurai this the 30th day of August 2010

Counsel for Petitioner