

N.M.T. Joy Immaculate Vs State

Court: Madras High Court

Date of Decision: April 11, 2002

Acts Referred: Constitution of India, 1950 " Article 20, 21, 22(1)
Criminal Procedure Code, 1973 (CrPC) " Section 160, 160(1), 167, 51
Penal Code, 1860 (IPC) " Section 302, 363

Hon'ble Judges: M. Karpagavinayagam, J

Bench: Single Bench

Advocate: H. Manivannan, for the Appellant; E. Raja, Addl. P.P., for the Respondent

Judgement

This Judgment has been overruled by : State Rep. by Inspector of Police and Others Vs. N.M.T. Joy Immaculate, AIR 2004 SC

2282 : (2004) CriLJ 2515 : (2004) 3 CTC 138 : (2004) 5 SCALE 330 : (2004) 5 SCC 729 : (2004) 3 SCR 71 Supp : (2004) AIRSCW

2828 : (2004) 4 Supreme 460

@JUDGMENTTAG-ORDER

M. Karpagavinayagam, J.

""What a shame that inside police custody, the helpless women are subjected to molestation, obscene violations

and teasing. For women, from the womb to tomb, female sex is now a sin, a misfortune, a guiltless guilt. Who is your daughter or sister? A woman!

Yet, the torture of womankind the world over is unspeakably unhappy. The condition of this lovely, gently gender, in police custody is so inhuman

that sensitive people feel a sense of shock and shame. In all custodial crimes what is of real concern is not only infliction of body pain but the

mental agony which a person undergoes within the four walls of police station. Whether it is physical assault or outrage of modesty in police

custody, the extent of trauma, a person experiences is beyond the purview of law.

2. This Court would recollect these observations made by legal pundits, while dealing with the facts of the present case of the petitioner, an young

college girl, who tapped the doors of this High Court, seeking for the justice with full of tears in both her eyes for having suffered due to the acts of

molestation, obscene violation and teasing, at the hands of Police Personnel of Chennai.

3. Let us now hear her plight in her own words spoken in her affidavit:

On 22.10.2001, that day was an unforgettable day in my life time. I had never come across such a miserable moment in my life. I was left alone in

the P4 Basin Bridge Police Station in the night time. At that time, taking liberty of my loneliness, the police personnel in the P4 Police Station

started misbehaving with me in the name of "Enquiry". On seeing this, my terrified father came to my rescue. My father made a request to the

Inspector of Police, P4 Police Station to shift me to some women police station. But the Inspector of Police, P4 Police Station never accepted the

prayer of my father. Instead he called me and started abusing me in a filthy language. On 23.10.2001 when the woman Sub Inspector of Police

Ms.Rajeswari @ Mercy came to the P4 Police Station, I reported her about the indecent behaviour of the police personnel. Instead of taking

action, she warned me and asked me to keep quiet. At the same time, she reported my complaint to the Inspector of Police, P4 Police Station.

The Inspector of Police became very wild after hearing this from the woman Sub Inspector. The result is, I was never given any food throughout

that day. On 23.10.2001 night also, the humiliations I suffered at the hands of the police personnel attached to P4 Police Station cannot be

explained in words. I was subjected to obscene violations and teasing by the police personnel in the P4 Police Station.

4. While reading the above statement given in the affidavit of the petitioner, this Court cannot but express its feelings of shock and sorrow over the

inhuman behaviour of the police personnel who are to be regarded as guardians of law and order.

5. Joy Immaculate, a young girl, having suffered at the hands of the P1 Pulianthope Police and P4 Basin Bridge Police surrendered before the

Magistrate apprehending further harassment at the hands of the police in a case registered as ""man missing case"". To make her condition further

worse, the P1 Pulianthope Police filed an application before the learned Magistrate for granting police custody. Despite the sordid story of the sad

Joy Immaculate, the Magistrate granted police custody on 6.11.2001 for one day. Next day, ie.7.11.2001, she was produced by the police with

the false records as if she gave a voluntary confession which led to the recovery of the weapon of the offence, namely nylon rope etc. Having

aggrieved by this, the petitioner has filed these petitions to set aside the order granting police custody and to transfer the investigation to some other

investigating agency.

6. The short facts culled out from the affidavits filed by the petitioner Joy Immaculate are as follows:

(a) The petitioner Miss Joy Immaculate is a final year post-graduate student in Ethiraj College. Her sister Nithya is running a readymade shop at

Spencer Plaza. For improving the business, Nithya borrowed Rs.30,000/- as loan from Rizwan Sait. Sathish is the friend of Rizwan Sait. Rizwan

Sait used to come often to the shop for collecting the interest amount.

(b) On 18.10.2001, P1 Pulianthope Police came to the residence of the petitioner and took her to police station and interrogated her with

reference to the missing of the said Rizwan Sait.

(c) On 20.10.2001, the P1 Police came again and took the petitioner and her sisters Ms.Nithya and Ms.Quieta to the police station. In the

evening, Miss Joy Immaculate and Ms.Nithya were taken to P4 Basin Bridge Police Station and they were interrogated. After interrogation, both

the petitioner and her sister Quieta were detained in the P4 Police Station in the night. Her father Raman also was allowed to stay in the police

station.

(d) On 21.10.2001 also, they were detained for whole day. On that day, her father came out of the police station and gave a telegram to the Chief

Justice, High Court, intimating the illegal custody of the petitioner and others in the P4 Police Station. On that night also, they were detained in the

police station.

(e) On 21.10.2001 mid night, the Inspector of Police, took the petitioner Miss Joy Immaculate in a Jeep to various places and asked her to

identify the houses of the relatives of Sathish to search for him.

(f) On 22.10.2001, the P4 Inspector of Police released her sister Quieta, but detained the petitioner. On 22.10.2001 also, her father sent a

telegram to the Chief Justice of High Court about the illegal custody of the petitioner in P4 Police Station.

(g) On the said night, the petitioner was detained alone in the Police Station. The mischief started then. The police personnel misbehaved with her

and attempted to outrage her modesty in the presence of her father. The father requested P4 Inspector of Police, the second respondent to shift

her to Women Police Station. The Inspector abused the petitioner and her father in a filthy language. Then, her father met the Assistant

Commissioner of Police, Pulianthope. Thereafter, a Woman Constable by name Ceylonmani was deputed to P4 Police Station to take her to

Women Police Station. At about 10.30 P.M., the petitioner was taken to the Women Police Station.

(h) Again on 23.10.2001, the petitioner and her father were brought back to the P4 Police Station. On that day, the petitioner reported to Mercy,

Woman Sub Inspector of Police, P4 Police Station, about the indecent behaviour of the police personnel on the earlier night. Instead of taking

action against the said police personnel, she warned the petitioner to keep quiet and then complained to the Inspector of Police about the

petitioner's report. On getting infuriated at this, the Inspector of Police, P4 Police Station, the second respondent did not provide food to the

petitioner for the whole day. On 23.10.2001 night, she was detained in the P4 Police Station. She was not taken to women police station in that

night. She spent a sleepless and horrible night in the police station itself.

(i) On 24.10.2001, the petitioner suffered monthly period. She was allowed by the Inspector of Police to go to her residence along with her father

for taking bath with the condition that she must come back to the police station on the same day. On 24.10.2001 also, a telegram was sent by her

mother to the Chief Justice, High Court.

(j) Having terrified at the sufferings experienced at the hands of the police personnel during the night time in the P4 Police Station and having no

courage to face the further attempts of molestation by the police personnel, she wanted to escape from the "Lustful Lock-up" and surrender before

the Judicial Magistrate. Accordingly, she appeared before the Judicial Magistrate, Alandur at about 12.45 P.M on 24.10.2001 and filed the

petition and requested to accept her surrender. In the surrender petition, she mentioned the reasons for the surrender and the sufferings at the

hands of the police in the "man missing case". The said petition was entertained and consequently, she was sent to judicial custody.

(k) On 2.11.2001, the P1 Police filed a petition for police custody. The petitioner filed an objection giving the clear details of the harassment by the

policemen at the P4 Police Station. She gave a sworn statement before the Magistrate on 5.11.2001 about her sufferings. She produced the

copies of telegrams sent to the Chief Justice of High Court. She expressed her unwillingness to go into police custody, on the apprehension of

outrage of modesty.

(l) Despite that, on 6.11.2001, one day custody was granted by the Magistrate. On 7.11.2001 she was produced back before the Magistrate. On

her production, she gave the statement, which was reduced into writing, that no one spoke to her and she was not taken to anywhere.

(m) However, the documents were filed by P1 Police as if she gave a voluntary confession, which led to the recovery of some incriminating

articles. These documents are false documents. Hence, the petitioner approached this Court praying for cancelling the order of police custody and

requesting the transfer of the investigation.

(n) According to her, she never borrowed any money from Rizwan Sait and her sister Nithya only borrowed Rs.30,000/-. There is no quarrel

between the petitioner and Rizwan Sait. During the custody, no confession was recorded from her. The witnesses Ganesan and Ramanathan who

are said to have attested the confession are fictitious persons. At the instance of the police, a false publication was made in Dhina Malar portraying

the petitioner and her sister as prostitutes involved in a murder case.

(o) The petitioner would state in her affidavits that she comes from a very good family having matriculation at "Our Lady's Matriculation School,

Chennai, higher secondary education at BAIN's Matriculation and Higher Secondary School and graduation at Ethiraj College and doing her

post-graduation in the same college. The petitioner shows willingness that she is prepared to undergo medical test, which would prove her

virginity.

7. Both P1 Pulianthope Inspector of Police, first respondent and P4 Basin Bridge Inspector of Police, second respondent and Woman Sub

Inspector of Police, third respondent have filed separate counter affidavits denying the allegations.

8. According to P1 Inspector of Police, the first respondent herein, a ""man missing case"" was registered on 9.10.2001 on the complaint of Jaffar

Sait about the missing of his brother Rizwan Sait. On 11.10.2001, Sathish Kumar was interrogated. Thereafter, he was absconding. Therefore, the

case was altered into Section 363 I.P.C. In the meantime, Habeas Corpus Petition was filed by the brother of Rizwan Sait. On 17.10.2001, the

police personnel of P1 Police Station went to the house of the petitioner and enquired about the petitioner and her sisters, since the petitioner was

arrayed as one of the respondents in the Habeas Corpus Petition. On 18.10.2001, the petitioner along with her sister Nithya and her father Raman

came voluntarily to the P1 Police Station. They told that Nithya and Joy Immaculate owed money to Rizwan Sait. Then, the P1 police on

22.10.2001 arrested one Devaraj. He gave confession that himself and Sathish Kumar took Rizwan Sait on 7.10.2001 in a Maruti Car and

murdered him near Thiruvallur. The motive was that Rizwan Sait financed money to Joy Immaculate and Sathish Kumar, but they did not repay the

money and therefore, he was harsh towards them. The investigation disclosed that Nithya borrowed Rs.65,000/- from Rizwan Sait, petitioner

borrowed Rs.55,000/-and Sathish Kumar borrowed Rs.25,000/-. There was a quarrel in the shop of Nithya on 4.10.2001. Sathish Kumar

promised to pay the amount on 7.10.2001 on behalf of others. On 5.10.2001, the conspiracy was hatched by them. Consequently, murder took

place. The petitioner was interrogated on 18.10.2001. On coming to know that Devaraj was arrested, the petitioner surrendered on 24.10.2001.

On 6.11.2001, police custody was granted and on 7.11.2001, confession was recorded and incriminating articles were seized. P1 Police alone

investigated the matter. P.4 Police did not investigate this case and has nothing to do with the investigation in this case.

9. The counter affidavit filed by the P4 Inspector of Police, second respondent would give the following facts:-

The Assistant Commissioner of Police, due to the filing of the Habeas Corpus Petition by the brother of Rizwan Sait, directed the Sub-Divisional

Inspectors including the P4 Inspector of Police to collect intelligence to trace the missing person. Therefore, the P4 Inspector and P1 Police were

deployed to trace the missing person. During enquiry, the P4 Inspector interrogated Nithya at Spencer Plaza on 20.10.2001 at 11.30 A.M. On

the same day at 7.00 P.M., the petitioner and her sister Quieta and her father were enquired in their house. On 21.10.2001, the petitioner and her

father came to P4 Police Station and disclosed the close association of Sathish and Deva with the missing person and gave useful clues. Since the

P1 Inspector of Police on 22.10.2001 found out the culprits, the P4 Police stopped the further enquiry. The allegation against him and the contents

of telegrams are false.

10. It is stated in the counter affidavit filed by the Woman Sub Inspector of Police, P4 Police Station, third respondent as follows:-

The averments that the petitioner was subjected to molestation, obscene violation at the instance of the Inspector of Police, P4 Police Station and

other police personnel and she has not cared about their illegal acts are false.

11. Originally, when the revision and CrI.M.Ps. were filed on 21.11.2001, P1 Inspector of Police alone was shown as respondent. On

20.12.2001, P1 Pulianthope Police filed a counter affidavit. On 24.1.2002, the petitioner filed an application in CrI.M.P.No.510 of 2002 to

implead the Inspector of Police and woman Sub Inspector of Police of P4 Basin Bridge Police Station as respondents 2 and 3. On receipt of

notice, the second respondent P4 Police Inspector filed a counter affidavit on 15.2.2002. The third respondent Woman Sub Inspector filed a

counter affidavit on 26.2.2002.

12. I have heard the counsel for the parties and given my anxious consideration to their respective pleas. I have also perused the records

summoned from the lower Court and the Case Diary produced by police and other typed sets.

13. On going through the various affidavits filed on different dates by the petitioner and the counter affidavits filed by the first respondent P1 Police

Inspector and the second respondent P4 Police Inspector and the third respondent P4 Woman Sub Inspector of Police and other records, it is

noticed that the petitioner Joy Immaculate without suppressing any fact gave out a clear story as to how she suffered at the hands of the P4 Police

Personnel, while she was illegally detained for four days i.e. from 20.10.2001 to 24.10.2001 morning and on the other hand, it is seen that the

affidavit of the P1 Inspector of Police, the first respondent is not only contradictory to the affidavit of the P4 Inspector of Police, but also not

consistent with the records summoned from the lower Court and the Case Diary and as such, this Court is constrained to come to the sad

conclusion that the respondents police have not come to this Court with clean hands.

14. On a careful perusal of the entire records, it is manifestly clear that not only the investigation which was done by the respondent police with

regard to the involvement of the petitioner is faulty, but also the respondents after creating the false records produced the same before the lower

Court to implicate the petitioner as A3 in this case.

15. More pity is that the learned Magistrate without considering the reasons mentioned in the surrender petition and the contents of the objection

petition for police custody filed by the petitioner and without verifying about the genuineness of the telegrams sent to the Hon"ble Chief Justice of

this High Court regarding her illegal custody from 20.10.2001 onwards, has hastened to pass an order granting custody to the police which has no

sanction of law. On going through the records, it is obvious that the respondents have filed false affidavits before this Court relating to the

investigation in regard to the involvement of the petitioner and without any valid ground, they obtained police custody and created false records as

if some incriminating articles have been recovered on her confession.

16. The following are the reasonings for arriving at the above conclusion:

(1) According to the affidavit dated 20.12.2001 filed by the P1 Inspector of Police, a case was registered on 9.10.2001 as a "man missing case

and during the investigation, the P1 Inspector of Police interrogated Sathish Kumar on 11.10.2001 and he was asked to come again on

12.10.2001. Since he did not come, a strong suspicion arose against him. Therefore, the case was altered into Section 363 I.P.C. Since in the

Habeas Corpus Petition, the petitioner Joy Immaculate was mentioned as one of the respondents, the police personnel of P1 Police Station went

and enquired the petitioner and her sisters on 17.10.2001 in their house. On 18.10.2001, they came voluntarily to the P1 Police Station. On

22.10.2001, Devaraj was arrested and confession was obtained from him and from the confession, it was disclosed that Rizwan Sait was

abducted in a Maruti Car by Sathish Kumar and Devaraj and he was murdered near Thiruvallur. The motive was that Rizwan Sait was very harsh

towards Sathish Kumar and Joy Immaculate for the non-payment of the money financed by him. It is stated that in the investigation, P4 Inspector

of Police never interfered and he had nothing to do with the said investigation. But, in the affidavit filed by the P4 Inspector of Police on 15.2.2002,

without knowing the stand taken by the P1 Inspector of Police, would state that both P1 Inspector of Police and P4 Inspector of Police were

directed by the Assistant Commissioner of Police to investigate and to trace the missing person. Accordingly, after 12.10.2001, the P1 Inspector

of Police and P4 Inspector of Police were deployed to trace the missing person. During the enquiry, the P4 Inspector of Police came to Spencer

Plaza on 20.10.2001 and interrogated Nithya at about 11.30 A.M. He would further state that he went to the house of the petitioner Joy

Immaculate and interrogated her, her sister Quieta and her father in their house at 7.00 P.M. They voluntarily stated about their close association

with the missing person Rizwan Sait. He would further admit in his affidavit that on 21.10.2001 at about 8.15 A.M., the petitioner and her father

N.M.T.Raman came to the police station and disclosed the close association of Sathish and Deva with the missing person and gave useful clues

and since the P1 Inspector of Police had a break through on 22.10.2001 by arresting Deva, the P4 Police stopped the enquiry to track down the

missing person. The above things would disclose that both these officers, viz., P1 and P4 Inspectors have taken different stand without knowing

the stand taken by the other. But, the fact remains from the perusal of the affidavits of these respondents, they admitted that on 17.10.2001, P1

police interrogated the petitioner and others at her house and they were interrogated by P1 police on 18.10.2001 at the police station. Similarly,

P4 Inspector of Police also admitted that Nithya was interrogated at Spencer Plaza by P4 police on 20.10.2001 and the petitioner and others in

their house and next day, ie.21.10.2001, they were interrogated at P4 Police Station. From their admission, it is clear that the stand taken by the

respondent police is that the petitioner and others in their family whenever they were wanted at the police station, co-operated with both P1 and

P4 police by making their presence in the very police station itself. Therefore, to say that P4 police has nothing to do with the investigation done by

P1 police through the affidavit of the first respondent police is nothing but false and misleading.

(2) According to P4 Inspector of Police, the petitioner and her family members were interrogated both on 20.10.2001 and 21.10.2001. There is

no whisper in his affidavit that he informed P1 police about the nature of the statements given by them to P4 police. It is further stated in the

affidavit that both P4 and P1 Police Inspectors were deployed on 12.10.2001 to track down the missing person as per the orders of the Assistant

Commissioner of Police. If it is so, the enquiry of the petitioner and her family members by P1 police on 17.10.2001 and 18.10.2001 must have

been known to P4 Inspector of Police. Similarly, the enquiry conducted by P4 police on 20.10.2001 by interrogating the petitioner and others in

the Spencer Plaza, at the house and at the police station must have been informed by P4 police to P1 police. There is nothing to indicate that such

an information was exchanged between these police stations. But, the fact remains that the petitioner was available for interrogation by both of

them till she surrendered before the Court on 24.10.2001 at about 12.45 P.M. It is quite strange to see that on 22.10.2001 Devaraj who was

arrested gave a confession to the P1 Inspector of Police stating that in pursuance of the conspiracy hatched by Sathish Kumar and Joy

Immaculate, the petitioner, himself and Sathish Kumar abducted Rizwan Sait in a Maruti Car to Thiruvallur and he was murdered. If the fact of

conspiracy is known to P1 police on 22.10.2001, the P1 police would have taken steps to trace the petitioner. There are no details either in the

records summoned from the lower Court or in the Case Diary produced by P1 police that steps were taken to interrogate the petitioner after

22.10.2001 or to trace her out. Furthermore, in the remand report relating to Devaraj submitted by P1 police on 23.10.2001, the P1 police did

not refer Joy Immaculate as one of the accused. Furthermore, after arrest of Devaraj, the F.I.R. was altered into Sections 363 and 302 I.P.C. In

the altered F.I.R., the names of Devaraj and Sathish Kumar only were shown as accused and not the petitioner. Therefore, on that day, the P1

police did not choose to implicate the petitioner as accused, even though there is a reference about the conspiracy by Sathish Kumar and Joy

Immaculate in the confession of Devaraj. But, in the Case Diary dated 22.10.2001 and 23.10.2001, it is mentioned that the petitioner (A3) was

absconding. The reading of the relevant papers dated 22.10.2001 and 23.10.2001 would show that the name of the petitioner as A3 (absconding)

was added subsequently. If the name of the petitioner found place in the Case Diary dated 22.10.2001 and 23.10.2001, the P1 Inspector of

Police would have mentioned the name of the petitioner as one of the accused in the remand report as well as in the Express F.I.R. dated

23.10.2001. Therefore, this Court strongly believes that the name of the petitioner was mentioned as A3 (absconding) was purposely shown in the

Case Diary in order to mislead the Court.

(3) The petition and affidavit filed on 2.11.2001 by the P1 police for granting custody before the Court would not show that Joy Immaculate was

arrayed as accused on the basis of the confession of Devaraj and on the other hand, it was stated that she was to be interrogated to find out her

involvement in the murder case. But, in the sworn statement made by P1 Inspector before the lower Court on 6.11.2001, he stated that the murder

was committed by Sathish Kumar and Devaraj in furtherance of the conspiracy hatched with the petitioner and Sathish Kumar (A2) gave a

statement that some incriminating articles like nylon rope are in the possession of the petitioner. These details were not mentioned in the first

affidavit filed on 2.11.2001 before the Court for granting custody. In the confession statement of Sathish Kumar, he mentioned about the

concealment of the car, nylon rope etc. After confession and recovery, a report has been submitted before the lower Court on 3.11.2001. It is

seen from the report that confession from him was recorded on 1.11.2001. If it is so, all these details given by Sathish Kumar would have been

mentioned in the affidavit filed on 2.11.2001 for granting custody. In his confession, it is stated that he would point out watch and nylon rope in the

terrace of the house of the petitioner and the car. In the report submitted by P1 Police before Court, it is stated that car and nylon kayiru were

recovered from Sathish Kumar. But, the word "nylon kayiru" was struck off by ink. It is clear from this that in order to show recovery of nylon

rope on the confession of the petitioner, the P1 police filed a petition on 2.11.2001 for granting police custody of the petitioner.

(4) On the date of surrender, the petitioner stated in the surrender petition that she was kept illegally at various police stations from 20.10.2001

and interrogated and she wanted to surrender before Court to prove her innocence. For the petition filed for granting custody by the police, she

filed objection narrating the entire story as to how she was harassed and teased and her modesty was outraged by P4 Police Personnel along with

the copies of the telegrams sent to the Chief Justice of the High Court. Not only that, when she was questioned by the learned Magistrate on

6.11.2001, she specifically stated that she was detained from 20.10.2001 to 24.10.2001 and during the nights of 21, 22 and 23.10.2001, she was

harassed by the police personnel of P4 Police Station. At that stage, the P1 police was not able to deny the telegrams and establish before the

lower Court that the contents of the telegrams are not true. Merely because she surrendered on 24.10.2001, the police wanted to make her as an

accused in order to cover up their mistakes, especially when she stated in the surrender petition that she was illegally detained in the police station.

(5) On 24.10.2001, the petitioner Joy Immaculate surrendered before Court. On 2.11.2001, the P1 police filed an affidavit requesting for police

custody. On the same day, a detailed objection was filed by the petitioner for grant of police custody. It is specifically stated in the objection that

she was illegally detained by P1 and P4 police for four days and teased and so, the police custody should not be granted. When she was directly

produced on 6.11.2001 before the Court, she further stated in the sworn statement before the Magistrate that from 20.10.2001 to 24.10.2001

she was illegally detained at the police station and she was taken to several places by the police and tortured and on 21st, 22nd and 23rd she

spent sleepless nights in the police station and there was an attempt to outrage her modesty and therefore, she was not inclined to go into police

custody. After the said statement, the matter was argued at length by the counsel for the petitioner before the concerned Court objecting to the

grant of police custody. Apart from that, the copies of the telegrams sent by the parents of the petitioner about the illegal detention during the

relevant dates to the Chief Justice of Madras High Court were also produced for the perusal of the Court. Without considering the same and

without adducing proper reason for grant of police custody, the Magistrate simply granted police custody on 6.11.2001 for one day up to 4.00

P.M. on 7.11.2001. The learned Magistrate simply acted upon the affidavit filed by the P1 Police Inspector and the statement given by him and

granted police custody without finding out the real fact situation. In the surrender petition filed on 25.10.2001, she said that she was innocent and

she was illegally detained in the police station. In the application filed by the P1 police on 2.11.2001 for grant of police custody, it was simply

referred that police custody of the petitioner is required to find out the involvement of the petitioner and nothing more. But, on 6.11.2001 when the

P1 Police Inspector of Police gave a statement stating Sathish Kumar gave confession that he handed over the incriminating articles like nylon

kayiru etc. to the petitioner and as such, the same have to be recovered from her. But, this reason was not mentioned in the application dated

2.11.2001. In the objection petition, the petitioner specifically stated that she was interrogated by P1 police on 18.10.2001 and again from

20.10.2001 to 24.10.2001 by P1 police and P4 police and on one day, at the intervention of the Assistant Commissioner of Police during the night

time, she was detained in the Women Police Station. One of the documents produced before the Magistrate would show that one Woman

Constable was sent by the Women Police Station to P4 Police Station for shadow. At that time, it was stated by the Assistant Public Prosecutor

that she was never interrogated earlier, which is quite contrary to the affidavits filed by the P1 Inspector of Police and P4 Inspector of Police. The

fact remains that the Magistrate has hastened to pass an order granting custody even without considering the telegrams, which were sent to the

Chief Justice of High Court at the earliest point of time. When a young girl cries for help from judiciary for protection from the police, who

committed the acts of molestation, it is pained to see that one of the members of the judiciary, ie. the learned Magistrate thought it fit to hand over

the young girl to the very same hands in the name of police custody. It is clear on principle, on the specific language of Section 167 of the Code,

that a Magistrate exercising jurisdiction u/s 167 performs essentially a judicial function and not merely an executive one. For the exercise of

jurisdiction u/s 167, the Magistrate is obliged to apply his mind to the materials produced before him, hear the accused either in person or through

his/her counsel as also the prosecution and then determine the significant question whether the accused should be detained at all.

(6) There is yet another aspect of the matter. On 6.11.2001, when the P1 Inspector of Police gave a statement to the Court, he stated that Sathish

Kumar who was interrogated in the police custody from 1.11.2001 to 3.11.2001 gave a confession stating that some of the incriminating articles

were handed over to the petitioner. But, the perusal of the confession of Sathish Kumar found in the Court records would make it clear that the

said statement made by P1 Inspector of Police before the Court is factually wrong. Sathish Kumar never stated that those articles were handed

over to the petitioner. On the other hand, he stated in his confession that if he is brought to the open terrace of the house belonging to Joy, he

would point out the polythene bag containing the shirt and nylon ropes. When such is the statement by Sathish, would it be proper for the

Magistrate to give police custody to the Inspector of Police? Furthermore, when a woman is to be interrogated in the police custody, it should be

done by the Woman Inspector alone. In this case, P1 Inspector of Police, a male Inspector requested for custody and the same was granted to

him. Thus, it is clear that the learned Magistrate totally ignored the telegrams sent to the Hon"ble Chief Justice and the contents of the objection

petition, surrender petition and the statement given by the petitioner to the Court stating that she was not willing to go for police custody as she was

tortured earlier, and granted police custody. This order, in my view, is ex facie illegal. Consequently, it has to be held that this order is non-est and

has to be erased from the records.

(7) After getting custody, she was produced on 7.11.2001 at 4.00 P.M. When she was produced, she stated to the Magistrate that nobody spoke

to her, while she was in custody and she was never taken to any place. This was recorded by the Magistrate. Strangely, when the petitioner was

produced before Court, the P1 Inspector of Police filed a Form 95 mahazar and confession stated to have been given by the petitioner as if she

conspired with Sathish Kumar for committing murder of Rizwan Sait and consequently, Sathish Kumar and Devaraj took Rizwan in a Maruti Car

and committed murder near Thiruvallur. The reading of the alleged confession statement by the petitioner would clearly show that such a statement

was not obtained from the petitioner. Moreover, this was not recorded in accordance with the condition imposed by the lower Court while

granting custody. As per the order dated 6.11.2001 of the Magistrate, the petitioner has to be interrogated at the Assistant Commissioner's

Office, All Women Police Station in the presence of the Woman Inspector of the said police station. But, the confession does not show that she

was interrogated in the presence of the woman Inspector. The Form 95 mahazar and the confession do not show that any Woman Inspector was

present when she was interrogated. The confession shows that it was recorded on 7.11.2001 in the women police station and nylon rope stated to

have been recovered at 11.00 A.M. at the terrace of the petitioner's house. In both the confession as well as the Form 95, there is no reference

about the presence of the Woman Inspector and no Woman Inspector signed the same to certify that she was interrogated in the presence of the

Woman Inspector. Furthermore, the reading of the confession dated 7.11.2001 of the petitioner is quite contradictory to the confession given by

Sathish Kumar between 1.11.2001 and 3.11.2001.

(8) One more feature to be noticed is quite interesting. In the confession, two names of the witnesses have been mentioned as attesting mahazar

witnesses. The address of those persons by name Ganesan and Ramanathan also have been mentioned. In the signature column, two names were

written as Ganesan and Ramanathan. It does not look like signature. That apart, the letters found in the confession and the letters found in the name

of Ganesan would indicate that it must be written by one and the same person. Furthermore, it is specifically stated by the petitioner in the

additional affidavit that these Ganesan and Ramanathan are not existing persons and they are fictitious persons and in the addresses given in the

confession, those persons are not residing. Unfortunately, there is no denial on the part of the respondent police for this. Added to this, it is noticed

that on 7.11.2001 at 4.00 P.M., the petitioner stated to the Magistrate that she never gave any statement nor was taken to any place. Then what

follows? The inescapable conclusion could be that the P1 police had created a false document as if a voluntary confession was recorded from the

petitioner, which led to the recovery, with a mahazar attested by witnesses who are fictitious persons.

(9) However, in view of the fact that the order granting police custody has been held to be non-est, the consequent confession and alleged

recovery has no evidentiary value. But, it is certain that in order to implicate the petitioner in the case for the reason that she made allegation against

the police officers before the lower Court regarding her illegal detention in the surrender petition, these records have been created by the P1 police

as if a nylon rope was recovered from her. Therefore, it is to be held that the investigation conducted by P1 police with reference to the petitioner

is not bona fide and purposely, false records have been created to implicate the petitioner, thereby caused serious injustice to the petitioner.

17. Let us now come to the case put forward by the petitioner. As indicated in the earlier paragraphs in detail, according to the petitioner, she was

called to P1 police station on 18.10.2001 along with her sisters and they were interrogated. They were again called to P1 police station on

20.10.2001. Thereafter, the petitioner and her sister Quieta were taken to P4 Police Station. The petitioner was detained in the night time. She

was taken to several places and asked to identify the house of the relatives of Sathish Kumar. Only on one day, at the intervention of the Assistant

Commissioner of Police, she was detained in the women police station and on all the other days, including in the nights, she was detained in the P4

Police Station. At that time, there were attempts to outrage her modesty and teasing, torture etc. by the P4 Police Inspector and other police

personnel. In the meantime, the telegrams were sent by the parents of the petitioner to the Hon"ble Chief Justice of the Madras High Court. On

24.10.2001 when she suffered monthly period, she had to request the Inspector of Police to allow her to go to her house to take bath.

Accordingly, she was allowed to go to her house in the morning on the condition that she should come back at 11.30 A.M. along with her father to

P4 Police Station. At that stage, she had to decide to surrender before the Court, since she was unable to bear the illegal acts of the police

personnel trying to dishonour her modesty. She was afraid of the nights in the days to come. Hence, she felt that it would be better to be detained

in the judicial custody in the jail than to be faced with the acts of molestation in the police station. This stand taken by the petitioner in a way is

supported by the other materials. As a matter of fact, some of the facts given by the petitioner have been admitted by the P1 Inspector of Policed

and P4 Inspector of Inspector themselves in their affidavits. P1 Inspector of Police in his affidavit admitted that she was interrogated by the Sub

Inspector of Police on 17.10.2001 at her house and on 18.10.2001 at the police station. The P4 Inspector of Police admitted that the petitioner

and her sister and father were interrogated on 20.10.2001 at their house and on 21.10.2001 at the police station. This shows that the earlier stand

taken by the P1 police before the Magistrate Court, while moving for police custody, that she was never interrogated is proved to be false.

18. The more important thing to be noticed in this case is that the entire family of the petitioner believed that the judiciary alone is their saviour. The

parents of the petitioner did not choose to send any telegram to any of the higher police officials or to the Executives of the Government. The

parents thought it fit to send telegrams only to the Hon"ble Chief Justice of the High Court placing full confidence in the judiciary hoping that their

honour and rights would be protected. According to the petitioner, her parents sent 3 telegrams on 21.10.2001, 23.10.2001 and 24.10.2001 to

the Chief Justice informing the illegal custody of the petitioner at P4 Police Station. This Court wanted to verify her statement. So, this Court

directed the Registry to find out whether such telegrams sent by the parents of the petitioner were received by the Hon"ble Chief Justice on the

respective dates. On verification by the Registry, it was found that these telegrams were received by the Hon"ble Chief Justice of this Court on

22.10.2001, 23.10.2001 and 24.10.2001 respectively and that on the orders of the Hon"ble Chief Justice, these telegrams were forwarded to the

Commissioner of Police, Chennai for further action then and there. The contents of these telegrams would clearly show that the petitioner was

detained at the P1 and P4 Police Station from 20.10.2001 to 24.10.2001 without allowing her to go to her house. Two telegrams had been sent

by the father of the petitioner and the last telegram had been sent by the mother of the petitioner who was hospitalised on hearing the news that she

was illegally detained.

19. If the contents of the telegrams are taken into account and the fact that the telegrams were received by the Hon"ble Chief Justice on the

respective dates is found to be correct, then it goes without saying that the petitioner was detained and tortured in so many ways including by the

attempt to outrage her modesty by the police personnel, as stated by the petitioner in her affidavits.

20. As a matter of fact, the petitioner has produced a copy of the Kumudham Reporter wherein a publication has been made showing that both the

second respondent Senthil Kumar, P4 Inspector and the third respondent Rajeswari alias Mercy, P4 Woman Sub Inspector gave interview to the

Reporter stating that they had investigated the matter and found out the involvement of the three accused including the petitioner in the murder of

Rizwan Sait. But, in the affidavit filed before this Court, P4 Inspector of Police stated that he did not investigate the matter. This shows that he has

filed false affidavit before this Court.

21. In fact, it is specifically stated by the petitioner in her affidavits filed on various dates that when she complained about her having undergone

molestation, obscene violation and teasing at the hands of the police personnel of P4 Police Station, the Woman Sub Inspector of Police Mercy

alias Rajeswari, third respondent, never cared about their illegal acts, but on the other hand, she warned her to keep quiet and reported her

complaint to the Inspector of Police.

22. Though it was totally denied by the third respondent Woman Sub Inspector of Police through her affidavit, she did not file any rejoinder for the

affidavits filed by the petitioner stating that both the Inspector of Police and the Woman Sub Inspector of Police, namely second and third

respondent gave a statement to the Kumudham Reporter that they only investigated the matter and found out the involvement of A1 and A2 and

the petitioner. This shows that what the petitioner stated in her affidavit about the Woman Sub Inspector also must be true.

23. This Court, while noticing the said attitude of the Woman Sub Inspector of Police, is constrained to observe with pain that the purpose for

which the Woman Sub Inspectors are posted in the police stations was completely forgotten by the said Woman Sub Inspector. When a young

college student of 22 years in the police custody complained to the Woman Sub Inspector that she underwent obscene violation and molestation at

the hands of the police personnel of P4 Station, the Woman Sub Inspector of Police Ms.Mercy without showing any sympathy, scolded and

warned the petitioner not to open her mouth. This indicates that Mercy, the Woman Sub Inspector is only by name and not "mercy" by heart. This

is quite unfortunate.

24. Thus, the above things would make it obvious that the petitioner had been wrongfully and illegally detained by P4 Police Station for four days

and she was harassed and tortured by the police personnel.

25. Custodial crimes, as the dailies and monthly magazines give out the wild truth of atrocities of police due to the excesses exerted upon poor and

hapless closely exhibit the violation of human dignity and destruction of human personality. There is no greater affront to human dignity than torture

and inhuman treatment, which need to be condemned in strongest terms.

26. An Indian woman attaches maximum importance to her chastity and would not easily be a party to any move which would jeopardise her

reputation and lower her in the esteem of others.

27. In this context, it would be relevant to refer to a paragraph which is given in Nandini Satpathy Vs. P.L. Dani and Another, :

Before discussing the core issues, we wish to note out regret, in this case, at a higher level police officer, ignorantly insisting on a woman appearing

at the police station, in flagrant contravention of the wholesome proviso to Section 160(1) of the Cr.P.C. Such deviance must be visited with

prompt punishment since policemen may not be a law unto themselves expecting others to obey the law. The wages of indifference is reprimand, of

intransigence disciplinary action. If the alibi is that the Sessions Court had directed the accused to appear at the police station, that is no absolution

for a police officer from disobedience of the law. There is public policy, not complimentary to the police personnel, behind this legislative

proscription, which keeps juveniles and females away from police company except at the former's safe residence. May be, in later years,

community confidence and consciousness will regard the police force as entitled to better trust and soften the stigmatising or suspicious provisions

now writ across the Code.

28. The Supreme Court in D.K.BASU v. STATE OF WEST BENGAL 1997 SCC (Cri) 920 said that custodial torture is perhaps one of the

worst crimes in a civilised society governed by the rule of law. The rights inherent under Articles 21 and 22(1) of the Constitution of India required

to be scrupulously protected.

29. In this case, the procedures to be followed as per Sections 160 and 51 of Cr.P.C. and the rights conferred on the person under Articles 20

and 21 of the Constitution have been given a complete go-by. u/s 160, no woman shall be required to attend any place other than the place in

which such woman resides. u/s 51, the woman, be a witness or accused, shall be examined by woman police.

30. The State Government of Tamil Nadu also have directed all the police stations not to keep the women in the police lock-ups in the night hours

and the women should not be required to attend before any police officer in the police station, but they shall be examined only in the place where

such woman resides.

31. The observations in Nandini Satpathy's case require to be borne in mind by all police personnel whether at the highest or at the lowest level

and also by the State Government, so that the erring police officials can be dealt with properly for the breach of this salient provision. The erring

police officials concerned cannot be excused for their unauthorised actions like obscene violation and molestation on the girl who is illegally

detained in the police station.

32. The discussion made in the above paragraphs would indicate that the investigation conducted by the first respondent as regards the petitioner

(A3) leaves no doubt in my mind that the investigation is not only unsatisfactory and faulty but also that the first respondent had filed a false

document before the lower Court and the false affidavit before this Court giving the incorrect particulars which would go to show that the

investigation conducted by the respondents is mala fide.

33. It is held in the various decisions rendered by this Court as well as the Supreme Court that if the local police did not investigate the matter in

the correct line and there is no bona fide, this Court has got powers to transfer the investigation to CBCID of the State or to CBI of the Central

Government.

34. But, in this case, this Court does not propose to transfer either to CBCID or to CBI. Though I find that the investigation done by the

respondents as regards the petitioner was not bona fide, this Court reposes full confidence on the honesty and the ability of Mr.Vijayakumar, the

present Commissioner of Police, Chennai. Therefore, it would be appropriate for this Court to direct Mr.Vijayakumar, the Commissioner of Police

to constitute a special and able team of the investigating agency headed by an Assistant Commissioner of Police under the direct supervision of the

Commissioner of Police to continue the investigation in this case, in the light of the observations made in the above paragraphs.

35. This Court has given a clear finding that the petitioner was detained at the P4 Police Station illegally and she was subjected to various acts like

molestation and attempt to outrage her modesty and human violation and as such, this Court is of the view that the police personnel of P1 and P4

Police Station who were responsible for the above acts are liable to be proceeded with. Under those circumstances, the Commissioner of Police is

directed to take immediate departmental action against the P1 Inspector of Police and P4 Inspector of Police and other police personnel who were

responsible for the illegal detention and other obscene acts committed on the petitioner.

36. This Court in various decisions would recognise the powers of this Court to grant compensation to the victim who suffered at the hands of the

police, while in police custody. It is settled law that the State is responsible for the tortuous acts committed by its employees and that for police

atrocities the State should pay compensation to the victim. In the assessment of compensation, the emphasis has to be on the compensatory and

not on punitive element. The objective is to apply balm to the wound suffered by the victim.

37. A rule as to the compensation even at the beginning of the prosecution to be awarded to the victim has been recognised by this Court as well

as the Apex Court as a rule of justice and fair play as laid down in Rudul Sah Vs. State of Bihar and Another, and PADMINI v. STATE OF

Tamil NADU 1993 L.W.(Cri.) 487.

38. Since there has been denial of the right of personal liberty guaranteed under Article 21 of the Constitution on account of the illegal custody of

the petitioner in P4 Police Station for four days and having regard to the other circumstances mentioned above, this Court is of the view that the

petitioner, the victim should be suitably compensated for the deprivation of her personal liberty. This Court, in exercise of its jurisdiction can pass an

order directing payment of money in the nature of compensation and consequential upon deprivation of fundamental rights by giving suitable

direction to the State.

39. Therefore, I am of the view that the ends of justice would be met, if the State Government through the Home Secretary is directed to pay

Rs.1,00,000/- to the petitioner towards compensation for her illegal detention in P4 Police Station by the police personnel who committed various

acts such as molestation, obscene violation etc. and accordingly directed.

40. To sum up:

(a) The order granting police custody in respect of the petitioner passed by the learned Magistrate is ex facie illegal. Consequently, it is held that

the said order is non-est and has to be erased from the records.

(b) In view of the fact that the order granting custody has become non-est, the consequent so-called confession and alleged recovery has no

evidentiary value.

(c) The investigation conducted by P1 and P4 police with reference to the petitioner is not bona fide and false records have been created to

implicate the petitioner, thereby caused serious injustice to the petitioner.

(d) The petitioner had been wrongfully and illegally detained in P4 Police Station for four days and she was harassed and tortured by the police

personnel.

(e) This Court does not propose to transfer investigation either to CBCID or to CBI, though it is found that the investigation done by the

respondents as regards the petitioner is mala fide. Since it reposes confidence on the honesty and ability of Mr.Vijayakumar, the Commissioner of

Police, Chennai, the suitable direction could be issued to him for continuing the investigation.

(f) Accordingly, the Commissioner of Police is directed to constitute a special team of the investigating agency headed by an Assistant

Commissioner of Police under the direction supervision of the Commissioner of Police to continue the investigation of the case. P1 and P4 police

should not be in the said team.

(g) The Commissioner of Police is also directed to take immediate departmental action against the P1 Inspector of Police, P4 Inspector of Police

and other police personnel who were responsible for the illegal detention and other obscene acts committed on the petitioner at P4 Police Station.

(h) The Home Secretary to the Government of Tamil Nadu is directed to pay a compensation of Rs.1,00,000/- to the petitioner, the victim for her

illegal detention in the P4 Police Station by the police personnel who committed the acts of molestation, obscene violation and teasing on the

petitioner, within one month from the date of receipt of this order.

(i) It is made clear that the observation regarding the conduct of investigation by the respondent police, which is held to be mala fide, is made as

against the petitioner alone and it would not apply to A1 and A2 whose complicity has been detected by them on the basis of the materials

collected during the investigation.

(j) The State Government may issue Circulars to all the police stations instructing the police officials that the woman accused/witness should not be

brought to the police station and they must be enquired only by the women police, at the places where they reside. The Government is directed to

ensure that this instruction is strictly followed by the police in future.

41. With the above observations, the revision and the petition for transfer of investigation are disposed of.