

DATED: 04.08.2008

CORAM

THE HON'BLE MR. JUSTICE R.REGUPATHI

M.P. No.1 of 2008

in

CrI.O.P. No.10896 of 2008

ORDER

Pursuant to the direction of this Court dated 07.07.2008 to file compliance report, the Director General of Police in consultation with the Government, has issued the following Circular Memorandum:-

" Circular Memorandum

Sub- Filing of cases registered under Dowry Death / Suicide in All Women P.S. - Instructions issued.

The Honorable High Court has issued the following observation in M.P. No.1/2008 in Criminal Original Petition No.10896/2008 filed by Tr.Romaiah.

i) Except in cases of Dowry Death/suicide and offences of serious nature, the Station House Officers of the All Women Police Stations are to register F.I.R. only on approval of the Dowry Prohibition Officer concerned.

ii) Social workers/mediators with experience may be nominated and housed in the same premises of All Women Police Stations along with Dowry Prohibition Officers.

iii) Arrest in matrimonial disputes, in particular arrest of aged, infirm, sick persons and minors, shall not be made by the Station House Officers of the All Women Police Stations.

iv) If arrest is necessary during investigation, sanction must be obtained from the Superintendent of Police concerned by forwarding the reasons recorded in writing.

v) Arrest can be made after filing of the final report before the Magistrate concerned if there is non-cooperation and abscondance of accused persons, and after receipt of appropriate order (Non-Bailable Warrant).

vi) Charge sheet must be filed within a period of 30 days from the date of registration of the F.I.R. and in case of failure, extension of time shall be sought for from the jurisdiction Magistrate indicating the reasons for the failure.

vii) No weapon including Lathis/physical force be used while handling cases at the All Women Police Stations.

viii) Complainants/victims should be provided with adequate security/accommodation at Government Home and interest of the children must be taken care of.

ix) Sridana properties/movables and immovable to be restored at the earliest to the victims/complainants and legal aid may be arranged for them through Legal Services Authority for immediate redressal of their grievances.

2) The Commissioners of Police in cities and Superintendents of Police in Districts are requested to strictly follow the above instructions without any deviations.

3) Receipt of the same should be acknowledged.

Sd/- (29.07.2008)

For Director General of Police."

2. In respect of suggestion Nos.8 and 11 made by this Court; in the letter, dated 01.08.2008, of the Director General of Police, it has been stated as follows:-

" 2) With regard to the suggestion No.8, i.e., "A different Uniform other than the regular one may be recommended for these police officers" - the matter requires deliberations at length with Senior Police Officers in the State. All the Senior Officers have been addressed to send their view on the subject. After obtaining their views the matter will be discussed at State Headquarters and a report in this regard will be sent.

3) With regard to suggestion No.11 - Director General of Police, Training has been addressed to initiate action to conduct Education programme for Police Officers on the objects of the legislation, judicial pronouncements and development of law. Further progress report will be sent. "

3. Learned Government Advocate (Crl. Side) submits that, by virtue of the above Circular Memorandum, all the Commissioners of Police and the Superintendents of Police in the State have been instructed to scrupulously follow the suggestions, enumerated in the form of instructions, and therefore, in effect, the order of this Court has been complied with.

4. The complaisant reaction to the suggestions made by this Court and issuance of the aforesaid Circular Memorandum with suitable instructions by the Director General of Police deserves deep appreciation of this Court. It must also be pointed out that though several such suggestions and instructions were earlier made/issued in that perspective by the Honourable Supreme Court as well as this Court, there was no expected progress or outcome since, in course of time, the system started trailing with the same deviation and anomalies to reform/correct which the instructions were issued. At least now, this Court is anxious to see that the directives are strictly followed perpetually with letter and spirit by the Investigating Officers of the Department in particular the officers posted at the All Women Police Stations.

5. Before parting, having regard to the directions issued to the Police Department, this Court deems it necessary to outline certain aspects with regard to the role of the Judicial Magistrates and their effective functioning in deriving a positive outcome. As could be seen, though suitable directions have been given to the police, in particular to the Station House Officers, still there may be scope for misuse of power. The directions/instructions are only illustrative and not exhaustive. When the investigating officers seek for remand of the accused, the Magistrates must examine the necessity for the same and only where there are valid grounds for believing that the accusation or information is well- founded and it appears that the investigation cannot be completed within a period of 24 hours, remand may be ordered. Violation of human rights and infringement of personal liberties must be viewed seriously. Except in cases of grave nature viz., dowry death, murder, suicide, hurt, etc., in other matters like matrimonial disputes between spouses where it may not take much time for the police officer to interrogate/investigate, remand should not be ordered mechanically, for, remand of an accused by a Magistrate is not automatic one on the mere request of the investigating officer and sufficient grounds must exist for the Magistrate to exercise the power of remand. To put it clear, a requisition of remand by the police must accompany the Case Diary, whereupon, the Magistrate must satisfy himself as to the adequacy and genuineness of the grounds necessitating judicial custody and while passing orders for remand or extension of remand, he must be alert to see that the liberty of the citizen is not violated by the police due to arbitrary exercise of power. Though a detailed speaking order is not required for remand, application of judicial mind is absolutely necessary. Of course, it is provided in the Code that remand should not exceed 15 days at a time, but, it does not mean that in all cases, remand for 15 days should be ordered invariably. At the time of production of the accused before the Magistrates, they should examine the necessity

and even at the time of initial remand, if it appears that remand is not necessary, bail application can be entertained provided the accused is prepared to furnish necessary surety or security as may be directed by the court. Likewise, in cases where remand is required to be ordered, the period must be circumscribed depending upon the nature of the case, the materials produced by the prosecution and the actual requirement. Though the law is manifestly clear, plain and patent, in many cases, it is witnessed that, on the mere request of the investigating officers, remand is ordered mechanically without application of mind and such illegal practice must be avoided. It must also be borne in mind that the object behind the enactment of Section 498-A IPC and the Dowry Prohibition Act is to check and curb the menace of dowry and at the same time, to save the matrimonial homes from destruction. Our experience shows that, apart from the husband, all family members are implicated and dragged to the police stations. Though arrest of those persons is not at all necessary, in a number of cases, such harassment is made simply to satisfy the ego and anger of the complainant. By suitably dealing with such matters, the injury to innocents could be avoided to a considerable extent by the Magistrates, but, if the Magistrates themselves accede to the bare requests of the police without examining the actual state of affairs, it would create negative effects thereby, the very purpose of the legislation would be defeated and the doors of conciliation would be closed forever. The husband and his family members may have difference of opinion in the dispute, for which, arrest and judicial remand are not the answers. The ultimate object of every legal system is to punish the guilty and protect the innocents. It is only before the jurisdiction Magistrate concerned, on conclusion of the investigation, final report is filed, whereupon, trial of the case is taken up and, in matters relating to serious offences, committal proceedings are initiated. It is the learned Magistrates who are empowered to order maintenance under Section 125 Cr.P.C. and award compensation in appropriate cases. Pending investigation, for grant of instant relief viz., to award interim maintenance, interim compensation, entrust custody of minor, forward the victims to Govt. Homes, issue search warrant, order bailable or non-bailable warrant, restore sridana properties, send the injured to the Hospital, provide security, etc., to the complainant/wife/victim, the learned Magistrates can be approached and at such point of time, the Magistrates must see to it that orders are passed without any delay. The preliminary job of an Investigating Officer including that of the Officers posted at the All Women Police Stations is only to collect the materials in respect of the dispute they are investigating and place the same before the court/Magistrate. For adjudicating any issue, the dispute must be forwarded only to the learned Magistrate or the Family court. In this type of fragile matters, in the name of 'petition enquiry' or investigation after registration of F.I.R., the police should not be allowed to conduct lengthy panchayats in police stations. If the dispute could not be resolved within a period of one week, a conclusion must be reached one way or the other and the matter must be forwarded to the learned Magistrate concerned. Therefore, while considering such cases, the learned Magistrates are directed to apply their judicial mind having regard to the propounded principles and procedure and the various aspects pointed out in the course of this order and also to monitor scrupulous adherence to the instructions referred to above by the police officers concerned.

6. With the above observations and direction, the petition is closed.

7. Registry is directed to immediately circulate copy of this order as well as the earlier order dated 07.07.2008 to the Director General of Police, Tamil Nadu, and all the Judicial Magistrates for compliance.