

**IN THE COURT OF THE SUBORDINATE JUDGE, KARUNAGAPPALLY**

Present:- Sri.Santhosh Das, Sub Judge, Karunagappally.

Saturday the 15<sup>th</sup> day of July, 2023/ 24<sup>th</sup> day of Ashadam, 1945.

**I.A.No.01/22 in OS.55/2022**

**Between**

Petitioner/- C.Jayakumar @ Panambil.S.Jayakumar,  
Plaintiff Advocate, S/o.Sreedharan, aged 45 years,

(By Adv.Shri.M.I.Alexander Panicker).

**And**

Respondents/- 1. G.Gopakumar, aged 42 years,  
Defendants  
  
2. Alosius Alexander, aged 34 years,

3. Dr.Sujith, aged 36 years,

(By Adv.Shri.Sujeesh Kumar for R1).

(By Adv.Sudheesh.V for R2).

(By Adv.Joseph Rony Jose for R3.)

This petition filed under Order 38 Rule 5 of Code of Civil Procedure.

This petition is coming on for final hearing before me on 15.07.2023 and on the same day the court passed the following.

### **ORDER**

1. This is an application under O. 38 Rule 5 CPC, and the suit is one seeking a decree for recovery of money by way of compensation, from the defendants and their assets, and respondents herein are defendants No. 5, 6 and 13 in the suit.
2. Petitioner/plaintiff is a lawyer by profession, and according to him he sustained custodial torture at the hands of Karunagappally Police and the suit is filed for damages in that connection. 1<sup>st</sup> respondent is working as Circle Inspector of Police and he is the Station House Officer of Karunagappally

Police Station, and 2<sup>nd</sup> respondent is the Sub Inspector of that Police Station.

The 3<sup>rd</sup> respondent is the duty Doctor of Taluk Hospital Karunagappally for the date 05/09/2022.

3. According to the petitioner, 1<sup>st</sup> respondent is venomous and revengeful in nature. 1<sup>st</sup> respondent was having grudge towards the petitioner as he had lead an agitation against him while that respondent's tenure as Sub Inspector at East Kallada Police Station in the year 2010, on account of which 1<sup>st</sup> respondent got transferred from East Kallada Police Station. 1<sup>st</sup> respondent had registered crime 400/2020 at East Kallada PS against 100 persons of that locality and that case is now pending trial before Principal Assistant Sessions Court Kollam as SC 53/2018. In that case, petitioner is appearing as the defence Counsel for some of the accused and 1<sup>st</sup> respondent is now avoiding appearance for giving evidence as CW1 in that case and he had once threatened some of the accused and cautioned that he will deal with the petitioner.

4. It is claimed by the petitioner that in order to wreck vengeance, 1<sup>st</sup>

respondent conspired and colluded with three goons so as to create a scene for enabling him to take the petitioner to police custody. Accordingly, on the evening of 05/09/2022 at about 07.15 pm, while the petitioner was driving his car towards Karunagappally Railway Station the said goons obstructed the car and created ruckus, and within no time defendants 7, 8 & 9 (police personals) reached the spot and petitioner was taken to custody and he was physically tortured by them while transport to the police station in the police jeep, and later he was also subjected to severe custodial torture at the police station by D5 to D10.

5. According to the petitioner, D5 to D10 brutally tortured him, and they threatened and detained him in illegal custody and petitioner was also handcuffed. On account of the physical torture, petitioner sustained serious injuries including fracture of frontal bone, and the handcuffing caused injuries on his wrists. According to the petitioner, he was let free only after 11 pm of that date, and thereafter he visited the 3<sup>rd</sup> respondent (13<sup>th</sup> defendant), Duty Doctor of Taluk Hospital, Karunagappally for treatment, whereupon all the injuries were shown to the Doctor for preparing wound

certificate. It is claimed by petitioner that when he got a copy of that wound certificate, on application, it was found that the said doctor had inserted certain words in the certificate, which would give an impression that the petitioner was then under the influence of alcohol. According to the petitioner, the Doctor had inserted the said words under the influence and threat of the Police officials, behind the back of the petitioner, without conducting any tests what so ever.

6. It is further claimed by the petitioner that defendants 5 to 10 have circulated selected visuals of the petitioner at the lockup, in handcuff through social media platforms in violation of the guidelines of Hon'ble Supreme Court and High Courts so as to spread the false narrative that the petitioner was creating ruckus in the police station.
7. It is further claimed by the petitioner that defendants 5 to 10 in order to camouflage and cover up the illegal detention and custodial torture have forged and fabricated evidence and caused to register a frivolous case against him as crime No. 1280/2022 of Karunagappally PS for the alleged offences

u/s. 294(b), 506 & 279 of IPC, 118(a) & 117(e) KP Act, and 185 of MV Act.

It is pointed out by the petitioner that the said FIR is registered at 22.56 hrs of 05/09/2022 and the time of the offence is recorded as from 20.15 to 20.16 hrs of 05.09.2022, whereas the petitioner was in illegal custody of the police from 19.15 hrs of 05.09.2022, making it impossible for him to commit the alleged offence in crime No. 1280/2022 supra.

8. According to the petitioner, he was denied basic human rights and there was also violation of the guidelines of Hon'ble Supreme Court in the matter of arrest and detention. Defendants 5 to 10 & 13 are persons who are expected to give protection to the person and property of citizens and they are expected to obey and respect the orders of Hon'ble Courts. The act and deeds of the defendants can never get protection under any law and can never be considered as part of their official act in good faith and / or in discharge of their official duty. In these circumstances, petitioner had filed suit for compensation and damages against the defendants.
  
9. In the matter, petitioner collected the details of the immovable properties

owned and possessed by the defendants, whereupon he got reliable information from a real estate broker by name Suresh Lal of Mundakkal that defendants 5, 6 & 13 are taking hasty steps to sell out their properties and that they are trying to shift their residence out of the jurisdiction of this Court. According to the petitioner, he is entitled for compensation from the defendants and if the respondents (D5, 6 & 13) succeed in their attempt to alienate/remove their properties, the execution of the decree that may be passed in the suit will be delayed or even defeated. Hence instant petition is filed seeking an attachment before judgment over the properties of defendants 5, 6 & 13, as per the schedules.

10. Notice on the petition was served on the respondents, and they were granted time for filing objection if any, but the 2<sup>nd</sup> respondent (D6) had not filed any objection. As regards respondent No. 1 & 3, separate objections were filed and respondent No. 1 also produced records, which are marked as Ext. B1 and B2.

11. The point to be considered is whether the properties of the respondents as

per the schedules can be attached at this stage.

12. Turning to the case of the petitioner, a perusal of the plaint and supporting records would definitely make out a prima-facie case in his favour of custodial torture, for which the police officials concerned may have to be held accountable. As regards respondent No. 1, by way of the objection, the entire allegations of illegal detention and custodial torture are refuted, and it is further claimed that this respondent was not in station on the alleged date and time. It is further asserted that the property as per schedule No. 1 is not in his name and that the same is owned and possessed by his wife. Ext. B1 is the photocopy of the title deed of that property and Ext. B2 is the photocopy of the tax receipt of that property. Admittedly, this respondent is the Station House Officer and it is too early to say that then he was not available on the date and time of petitioner's alleged illegal detention and custodial torture. However, there cannot be any quarrel that 3<sup>rd</sup> party property cannot be attached and Ext. B1 and B2 would show that the property described in schedule 1 is not in the name of respondent No. 1.



13. As mentioned above, respondent No. 2 had not filed any objection on this petition. Admittedly, he is the Sub Inspector of Police of Karunagappally Police Station where the petitioner claims to have been under illegal detention and custodial torture. Now, as mentioned supra, a strong prima-facie case is made out by the petitioner against the police in the matter of custodial torture, and there is likelihood that the suit will succeed. It is affirmed by the petitioner that this respondent is taking hasty steps to alienate petitioner schedule No. 2 property and if that is permitted, the scope of the execution of the decree that may be passed against this respondent would become bleak.

14. Turning to the case of respondent No. 3, he being the Doctor is not answerable for the alleged illegal detention and custodial torture, no doubt. Petitioner had roped in this respondent on the claim that the Doctor had inserted certain words in the medical certificate, under the influence and threat of Police officials, without conducting any tests what so ever, which painted a false narrative that the petitioner was under the influence of alcohol. Now, it is common practice that the doctors will make a note of the

general appearance of the patient in the medical records and that cannot be faulted with. At this juncture, it is not safe to conclude that the Doctor acted under the influence and threat of the Police Officials and prepared the medical certificate showing drunkenness nature of the petitioner. Therefore, I don't find a prima-facie case against this respondent so as to bound this respondent with an order of attachment before judgment.

15. For the discussions above, respondent No. 2 ( defendant No. 6) is hereby called upon to furnish security for the suit amount of ₹ 25,00,000/- only, or he shall show cause as to why he shall not furnish security for that amount, and in the meantime, the property in schedule No. 2 of this petition will be put under conditional attachment, and the order of conditional attachment will be communicated to the S.R.O and V.O concerned.
16. Respondent No. 2 / defendant No. 6 shall furnish security or show cause as above not later than 19.10.2023.

17. Accordingly, this petition stands allowed in part as above.

*(Dictated to the Confidential Assistant, typed by her corrected and pronounced by me in Open Court on this the 15<sup>th</sup> day of July 2023.)*

Sd/-  
Santhosh Das  
Sub Judge.

Appendix:-

Exhibits marked from side of Petitioner:- Nil.

Exhibits marked from side of Respondent:-

B1. 28.11.2014 Photocopy of Title deed No.3060/2014.

B2. 03.07.2023 Photocopy of Tax receipt issued from Vadakkevila Village Office.

Witness Examined from both sides:- Nil.

Id/-  
Sub Judge.

//True copy//

Typed by : Sunil Kumar.S,  
Compared by: Sini.G

Sub Judge.