

**MEMORANDUM OF CRIMINAL ORIGINAL PETITION
(UNDER SECTION 482 Cr.P.C)
IN THE HIGH COURT OF JUDICATURE MADRAS
AT MADURAI BENCH
(Criminal Original Jurisdiction)**

Crl.O.P.(MD) No. of 2020

-Against -

Crime No. 303 of 2020
(On the file of the 3rd respondent Police Station)

Habeeb Mohamed
S/o. Mohideen Thambi
483/177Q, Sadukai Street
Kayalpattinam
Thoothukudi District ... Petitioner

-Vs-

1. The Director General of Police
Office of Director General of Police
Dr. Radha Krishnan Salai,
Mylapore,
Chennai – 600 004.
2. The Superintendent of Police
Office of Superintendent of Police
Thoothukudi District
Thootukudi – 628 101
3. The Inspector of Police
Arumuganeri Police Station
Thootukudi District
(Crime No: 303 of 2020)
4. The Deputy Superintendent of Police
C.B.C.I.D.
Crime Branch, Criminal Investigation Department
No.26 D, Colony,
Perumalpuram,
Vasantha Nagar
Tirunelveli – 627 007. ... Respondents

AFFIDAVIT OF THE PETITIONER

I, Habeeb Mohamed, Son of Mohideen Thambi, aged about 31 years and residing at No. 483/177Q, Sadukai Street, Kayalpattinam, Thoothukudi District do hereby solemnly affirm and sincerely state as follows:

1. I am the Petitioner herein and I am very well acquainted with the facts and circumstances of case.
2. I humbly submit that I am engaged in Auto Driving work at my native place. I state that on 09.06.2020 at about 10.30 A.M., two women police personnel had stopped me and one of the woman police had scolded me for not wearing a mask. In the meantime they called some other police to come to the spot. After a few minutes, a policeman came to the spot and asked me to get on to his bike. I was taken to Arumuganeri Police Station and six police officials (men and women) brutally beat me at 3rd Respondent's police station. I came to know the police names were Mrs. Shanthi (Inspector) and Mr. Saravanan (Sub-Inspector). I do not know the name of the other 4 policemen, but I would be able to identify them if they are produced. The Inspector of Police Ms. Shanthi came and kicked me on my face, the other four police men had beaten me by using blue colour plastic pipes on my thigh, buttocks and stomach. They beat me for about 2 hours and at 02.30 p.m. they let me out by getting my signature on a paper. I came by walk to my home with great difficulty. The next day my legs and hands were swollen and blood was oozing while urinating.
3. I state that I was in terrible fear and during the next two days, my health started deteriorating. I had difficulty in passing urine and started experiencing severe pain. I was unable to cope up any further and therefore on the morning of 11-06-2020, I went to KMT Hospital in Kayalpattinam. When the doctors enquired about the reason for my injuries, I had informed them that I was beaten by the police on 09-06-2020 at the 3rd Respondent's hospital. The doctors gave me some treatment and asked me to go to Kayalpattinam Government Hospital since the matter involved allegations made against police officers.
4. I state that after receiving their reference letter, I went to the Kayalpattinam Government Hospital on 11.06.2020 at about 6:30 P.M. The doctor had enquired about my health and how I sustained injuries. Thereafter the Government Doctor entered all the details

including the fact that I was assaulted in Arumuganeri Police Station in an Accident Register (AR) book and gave me medical treatment. Since the injuries were severe, the Doctor advised me to go to the Thoothukudi Government Hospital for receiving better treatment and called for the 108 ambulances service.

5. I submit that in the meantime, police officers from Arumuganeri Station, led by Mr.Saravanan who is the Sub Inspector of Police, along with 2 policemen came to the Hospital and personally threatened me not to proceed to the Thoothukudi Government Hospital. The said Sub Inspector of Police namely Mr. Saravanan further warned me if I filed any complaint he would foist criminal cases against me and the family on trumped up charges. When the 108 ambulance arrived, he forced it to return empty. Later, I came to know through RTI, policemen had erased reference to Arumuganeri Police Station in the Accident Register. Fortunately, I have with me a copy of the original AR entry. After nearly 3 hours of struggle, I was forced to return home without proceeding further for treatment in Thoothukudi Government Hospital. I state that on 11.06.2020 at about 10:30 pm during night hours, as I felt severely uncomfortable, I went again to the KMT Hospital again for treatment.

6. I submit that in the meantime, fearing I may not get admission and treatment, I told them that I would maintain that the injuries were due to my fall from Autorickshaw and not due to assault by Police. After overnight stay, with my condition still bad, I was requested to shift to Rosemary Hospital in Tirunelveli, which had specialist doctors. On 12-06-2020, I got admitted in the Rosemary Hospital and stayed there till 18-06-2020. Here too, I had to tell them that I fell from an Auto rickshaw, fearing refusal of admission. I underwent Dialysis in Rosemary Hospital during my stay. After my discharge, I was asked to come to the hospital for dialysis every second or third day. Since then, I have been visiting Rosemary Hospital for periodic check-up and review. During all this period, the police directly and indirectly kept putting pressure on my family not to file any complaint against the police.

7. I submit I was stopped by policemen to lodge a complaint in view of the fear of police physical and mental torture. In the meantime an organization based in Kayalpattinam (Mass Empowerment and Guidance Association), having come to know about what had happened to me at the Police Station, sent complaints to higher officials. The Times of India Newspaper publication dated 27-06-2020 also published details about physical torture and illegal confinement at police station.
8. I state that following this, the Deputy Superintendent of Police (DSP), Tiruchendur Mr.Bharat came to my residence on 28.06.2020, advising me not to escalate the matter. In the meanwhile, Mr. Henri Tiphagne, Executive Director, People's Watch, which is based in Madurai, wrote about the police brutality to the District Legal Aid Society (DLAS), Thoothukudi. Following the same I was provided Legal Assistance through one Advocate Mr.Ramachandran by the Principal District Judge, Thoothukudi who is the Chairman of DLAS.
9. I submit that with the help of the legal assistance provided by DLAS, I picked up courage to file a detailed complaint about the assault made on me at Arumuganeri Police Station on 29-06-2020. I sent complaints to the Inspector, Arumuganeri Police Station and other higher officials, requesting filing of a First Information Report (FIR) and for taking action against the policemen who had assaulted me. On 03-07-2020, DSP Mr.Bharat visited my home and said he had been ordered by the Superintendent of Police (SP), Thoothukudi to enquire my case. On 05-07-2020, my mother and wife were summoned by the said DSP to his office for enquiry. However, no FIR was filed even after the enquiry. My family was approached by a policeman who offered money to drop my complaint. My family refused to accept the police officer's advice.
10. I submit that on 22-07-2020, I had sent a reminder representation to 2nd Respondent about my complaint. Even after this, no FIR was filed. I came to realize no justice can be expected from the District Police Administration. In the first week of September, 2020, I

approached the Judicial Magistrate, Tiruchendur and sought for direction under Section 156(3) of Cr.P.C. to the Police, to file an FIR. The learned Judicial Magistrate categorically recorded findings and consequently directed the Police to file a First Information Report since cognizable offences was made out. On 09-09-2020, exactly 3 months after the incident, an FIR was registered at 3rd Respondent Police Station in Crime No.303 of 2020 for the offences under Sections 323, 324, 341, 342 and 506(1) of IPC. However, even after this FIR was filed, no arrests have been made of the policemen who had assaulted me on 09-06-2020.

11. I submit that on 17-09-2020, without any information, the DSP (Anti land grabbing) Mr. Elangovan came to my home. He said he had been appointed as an Investigating Officer by the 2nd Respondent to inquire into my allegations. Even though I was not feeling well, I was asked by the DSP to accompany him to Kuthukal Street, the scene from where the police had picked me up and taken me to Police Station and assaulted. I showed the place where the incident happened. At that moment, I suddenly fell ill and vomited. My family members advised me to return home and take rest. The DSP was also a witness to my ill health. After a few minutes, the DSP came to my residence and insisted on taking my statement. I was not feeling well. After my family members informed my Advocate and after my Advocate spoke to him, the DSP relented and left my residence.

12. I state that on 09-06-2020, I was threatened not to go to Thoothukudi Government Hospital for treatment, the 108 ambulance service was forced to return as an empty vehicle, the AR copy was tampered, the police had threatened and offered inducements to drop my complaint, even after reminders they refused to file FIR, eventually after the learned Judicial Magistrate's direction they filed FIR, how high handedly the DSP (Anti-Land Grabbing) treated me, it is my sincere belief the Police Administration in Thoothukudi District is prejudiced and would not offer justice to me. Hence, I have sent representations on 22.09.2020 and requested to transfer my case to

CBCID for a proper and impartial investigation. I had further requested that the FIR may be alerted to include offences under Section 307 and Section 321 of Indian Penal Code in addition to Section 323, 324, 341, 342 and 506(1) of IPC. The Government Hospital records were tampered by the police officials.

13. I submit that the Hon'ble Supreme Court has issued guidelines in ***D.K. Basu's case (1996 (4) Crimes 233)*** about the arrest procedure and against the custodial torture. But the police officers have not followed the judgment and subsequent amendments of Sections 41-A, 41-B, 41-C, 41-D of Cr.P.C. Even for registering my complaint I was threatened by police officers and made all obstacles.

14. I submit that the present F.I.R. was registered as against the Mrs. Shanthi who is the Inspector of Police, Mr. Saravanan who is the Sub-Inspector of Police and other 4 policemen. Hence an independent investigation is necessary. I state that a fair investigation is fundamental right which is guaranteed under Article 21 of the Indian Constitution. I was further advised to state that the Hon'ble Apex Court in *Mithilesh Kumar Singh and others [(2015) 9 SCC 795]*, has held: *"Importance of a fair and proper investigation cannot be understated. In an adversarial system of administration of justice, fairness of investigation is the very first requirement for the fairness of a trial. A trial based on a partisan, motivated, one - sided, or biased investigation can hardly be fair. That is because while the trial itself may be procedurally correct, the essence and the purpose thereof may be vitiated by an unfair or ineffective investigation. This court has in several pronouncements, emphasized the importance of the fairness of the investigation". Further in the same judgment emphasized that "Not only the fair trial but fair investigation is also part of constitutional rights guaranteed under Article 20 and 21 of the Constitution of India. Therefore, investigation must be fair, transparent and judicious as it is the minimum requirement of the rule of law. The investigating agency cannot be permitted to conduct an investigation in a tainted and biased manner. Where non-interference of the court would ultimately result in failure of justice, the court must interfere. In such a situation, it may be in the interest of justice that independent agency chosen by the High Court makes a fresh investigation".*

15. It is further submitted that the Hon'ble Madras High Court delivered a detailed judgment in ***P. Rajakumari Vs the Additional Director General of Police and another (CDJ 2014 MHC 3992)*** wherein petitioner's mother was subjected to custodial torture at the police station and the same was entertained this Hon'ble Court granted interim relief of Rs. 2,00,000/- Compensation and further this Hon'ble Court ordered C.B.I. Investigation. I further state this Hon'ble changed the investigation on the sole ground that police officers are working in the same police station limit in ***M. Deivam Vs The Director General of Police, (Crl.O.P(MD) No.3121 of 2015 dated 10.04.2015)***. I submit that the prison officials also belong to the State police and are working near the 3rd Respondent police station. Hence I have reasonable apprehension for the influence the accused police officials and prison officials. ***In Ramesh Kumari vs. State (NCT Delhi) & Ors. [2006 (2) SCC 677]***, the Hon'ble Supreme Court at Paragraph 8 observed : ".....We are also of the view that since there is allegation against the police personnel, the interest of justice would be better served if the case is registered and investigated by an independent agency like CBI." Following the same proposition the Hon'ble Supreme Court transferred the investigation to C.B.I. from state police for an impartial investigation. ***(Rubabbuddin Sheikh vs State Of Gujarat (2010 (2) SCC (Crl) 1006)***.

16. In the circumstances, I have no other alternate and efficacious remedy except to approach this Hon'ble Court under Section 482 of Cr.P.C. by invoking extraordinary Original Jurisdiction of this Hon'ble Court. The non disposal of the Petitioner's representation infringes basis fundamental rights and legal right of the Petitioner. The non action of authorities is nothing but the denial of Constitution Rights envisaged under Articles 14 and 21 of the Constitution of India.

It is prayed this Hon'ble court may be pleased to **stay** the entire criminal proceedings pending in Crime No. 303 of 2020 on the file of the 3rd Respondent police station till the disposal of criminal petition and pass

further or other order as this Hon'ble court may deem fit and proper and thus render justice.

For the reasons stated above, it is most respectfully prayed that this Honorable Court may be pleased to issue a direction to transfer the investigation to the 4th Respondent office for conducting fair and impartial investigation in Crime No. 303 of 2020 on the file of the Respondent No-3 and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

Solemnly affirmed at Madurai on this
 th day of October, 2020 and having
understood the contents which
where read and explained in Tamil
the deponent signed his name
in my presence.

