



Human Rights Defenders Alert - India

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February 26, 2015

Shri A. K. Parashar
National Focal Point - Human Rights Defenders & Joint Registrar
National Human Rights Commission
Manav Adhikar Bhawan,
Block-C, GPO Complex, INA,
New Delhi – 110 023
Email: hrd-nhrc@nic.in

Dear Sir,

Sub: HRD Alert - India - Urgent Appeal for Action – Tamil Nadu - Human Rights Activist and a functionary of the Citizens for Human Rights Movement [CHRM] initiated by People’s Watch arbitrarily arrested and remanded to judicial custody on false criminal charges of impersonating as public servant, cheating and using the emblem among others - Regarding

Greetings from Human Rights Defenders Alert - India!

HRD Alert - India is a Forum of Human Rights Defenders for Human Rights Defenders. It endeavours to initiate actions on behalf of Human Rights Defenders under threat or with security concerns.

We are now writing to express our grave concern regarding the arbitrary arrest and remand to judicial custody of Mr. K. Kandhasamy, District Organizer, Citizens for Human Rights Movement (CHRM) a non registered people’s organization initiated by People’s Watch on false charges of personating as public servant, cheating and improper use of emblems among others on the 25th of February 2015.

Source of Information on the Incident:

Mr. Sheikh Ibrahim, Lawyer based at Ramanathapuram & Pro Bono lawyer for People’s Watch, a national human rights organization headquartered in Madurai, Tamil Nadu

The Human Rights Defender:

Kandhasamy S/o Kalimuthu works as an Advocate’s Clerk of Mr. Sheik Ibrahim, Lawyer, Ramanathapuram. Kandhasamy is also an honorary District Organizer of Citizen for Human Rights Movement (CHRM) initiated by People’s Watch and Assistant to the Pro bono lawyer taking care of Ramanathapuram cases of People’s Watch, a human rights organization situated in Madurai.

The Perpetrators:

Police personnel from Kenikkarai Police Station, Ramanathapuram

- Mr. Vivekananthar, Inspector of Police
- Mr. Ganeshalinga Pandi, Sub - Inspector of Police,
- Mahendran, Head constable

Date and time of Incident:

On the 25th of February 2015 at around 07.15 PM .

Place of Incident:

At the residence of the Human Rights Defender in D Block, Kavarangulam, Ramanathapuram, Tamil Nadu

Incident detail:

According to the source, on the 25th of February 2015 at about 7.15 p.m. Mr. K. Kandhasamy was actually arrested [though the FIR states that he was arrested in a bus stop] from his residence in Ramanathapuram by police personnel of Kenikkarai Police Station and subsequently remanded to judicial custody in the late morning of the 25th February. He was not issued a warrant or arrest memo at the time of arrest by the Policemen who carried out the arrest. On line complaints were sent twice in the night of the 24th & 25th February to the SP Ramnad district.

The charge is that “Citizens for Human Rights Movement”, the Movement of which Mr. Kandhasamy is the Honorary District Organizer for Ramanathapuram, has in its Board the name of the movement which has the terms “Human Rights” in them which is a violation of the amendment to the Tamilnadu Societies Registration Act brought about on the recommendation of the Tamilnadu State Human Rights Commission that no non-governmental institution should have the terms “human rights” in its name. This is a violation of the right to association in this country.

Case was registered in Cr. No. 92/2015 under sections 170 IPC (personating a public servant) and Sec 420 (cheating) of the IPC read with Section 5 of the Emblems and Names (Prevention of Improper Use) Act, 1950 and Mr. Kandhasamy was subsequently remanded to judicial custody. According to the FIR, as per the judgment in CrI. OP. No. 15960 of 2014 of the Madurai Bench of the Madras High Court of Justice Kirubakaran use of visiting cards, emblems, boards etc. with the name “human rights organization” and misleading the public is an offence. The FIR also states that it was also written on the board that persons with complaints regarding custodial torture, violence against women, untouchability, violence against children and other forms of human rights violations may approach the CHRM. . But it is to be noted here that the words “Human Rights” have not been misused by the Defender or the movement of which he is the District Organizer and they have not posed anywhere as a governmental body, neither have they misled the public by assuring any remedy that a statutory institution alone can

provide. There is no averment in the FIR indicating whom Kandasamy has cheated and the complainant is the Inspector of Police. The CHRM only provides legal counsel and assistance to the victims of violations in addressing their issues in courts of law or through human rights institutions or through law enforcement officials or by referring them to relevant bodies and therefore the allegations made are groundless and baseless.

The undersigned is the State Advisor of CHRM and the first Name Board of the Movement was inaugurated by the former Supreme Court Retd. And former Acting Chairperson of the NJHRC, Justice Mr. Shivraj Patil in the premises of Peoples' Watch at Madurai in the year 2007 and the Boards in different cells across the state are similar ones.

As per the Judgment delivered by the Supreme Court in the Arnesh Kumar Vs. State of Bihar case on 2nd July, 2014, where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years; whether with or without fine, arrest and detention is not a necessity and this case falls under this category. The Judgment is enclosed herewith for your kind perusal.

It is especially worrisome that the human rights defender is a heart patient and had very recently approached one Dr. Gnanakumar with complaints of kidney stones requiring medical attention and had only returned from the doctor. The provisions of the Emblems and Names (Prevention of Improper Use) Act 1950 . Sec 5 reads as follows:

Sec 3. Prohibition of improper use of certain emblems and names – Notwithstanding anything contained in any law for the time being in force, no person shall, except in such cases and under such conditions as may be prescribed by the Central Government, use, or continue to use, for the purpose of any trade, business, calling or profession or in the title of any patent, or in any trade mark or design, any name or emblem specified in the Schedule or any colorable imitation thereof without the previous permission of the Central Government or of such officer of Government as may be authorized in this behalf by the Central Government.

Sec5Penalty:

Any person who contravenes the provisions of section 3 shall be punishable with fine which may extend to five hundred rupees.

We wish to insist that human rights is a value and hence the right to association includes the right to name the association as per the values that the members of the association cherish and not otherwise. We however hasten to also state that we are not against any criminal action being initiated under the normal criminal law provided there is evidence of cheating and evidence for any other criminal act that any individual or association of human rights defenders get engaged in. The right of human rights defenders includes their right to association and engaged in the protection and promotion of human rights and fundamental freedoms. The National Human Rights Commission is an institutional protector of human rights defenders and hence the duty

therefore to protect their rights as per the provisions of the UN Declaration of Human Rights Defenders. It is the right of human rights defenders to also constitute an association that remains unregistered as long as they function within the parameters of law.

We also have reliable information that there are also further FIRs registered in different districts of Tamilnadu and specially against one Mr. Madurai Veeran the District Organiser of the CHRM in Madurai at the Tallakulam Police Station on 25th February 2015. It is also expected that several other FIRs have also been registered in several police stations across the state and many other illegal arrests could also follow similar to this special case of Kandhasamy.

Appeal:

We, therefore urge you to immediately take necessary steps to order the Investigation wing of the NHRC

- To undertake an immediate, thorough, transparent, effective and impartial investigation into the above-mentioned events of the targeting of the human rights defender and recommend to the NHRC the dropping the baseless charges against him and release him;
- To recommend initiation of departmental action and contempt of court proceedings by the Madras High Court on all the police and their higher officials at Ramnad district who arrested the human rights defender without providing an arrest memo or warrant and slapped false charges on him contrary to the directions of the Supreme Court of India in Arnesh Kumar Vs. State of Bihar case on 2nd July, 2014 in Criminal Appeal No 1277/2014 @ Special Leave Petition (Criminal) No 9127/2013 delivered by Judges Chandramauli Kr. Prasad and Pinaki Chandra Ghose.
- To recommend departmental action against the Judicial Magistrate No II Ramnathapuram by the High Court of Madras for contravening the directions of the Supreme Court in Arnesh Kumar Vs. State of Bihar case on 2nd July, 2014 in Criminal Appeal No 1277/2014 @ Special Leave Petition (Criminal) No 9127/2013 delivered by Judges Chandramauli Kr. Prasad and Pinaki Chandra Ghose, as directed in the Court's order.
- To recommend to the state head of the police for transferring the investigation in this case to the Crime Branch CID Police so that the local police who have carried out the arrest in the first place do not get involved in the same investigation;

We further also request the Hon'ble Commission to take necessary steps to intervene in the Madras High Court proceedings before its Madurai Bench in Crl. O.P. No . 15960 of 2014 to ensure that the rights of human rights defenders to function and even challenge the amendment law to the Tamilnadu Societies

Registration Act that deny the right to association of humanrights defenders utilising the provisions of Sec 12 (b) of the Protection of Human Rights Act 1993.

- Guarantee in all circumstances the physical and psychological integrity of Kandhasamy who is a heart patient and has kidney complaints;
- Ensure provision of reparation, compensation, apology to the victim for the physical and psychological sufferings he underwent because of this arbitrary arrest and detention and provide a re-assurance of not engaging in such acts against HRDs such as Kandhasamy;
- Put an end to all acts of harassment against all human rights defenders in the State and District to ensure that in all circumstances they carry out their activities without any hindrances;
- Takes steps to conform to the provisions of the UN Declaration on Human Rights Defenders, adopted by the General Assembly of the United Nations on December 9, 1998, especially:
 - Article 1, which states that “everyone has the right, individually and in association with others, to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels
 - Article 12.2, which provides that “the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration”;
- More generally, ensures in all circumstances the respect for human rights and fundamental freedoms in accordance with in accordance with the Universal Declaration of Human Rights and with international human rights instruments ratified by India.

Looking forward to your immediate action in this regard,

Yours sincerely,



(Henri Tiphagne)

Honorary National Working Secretary.

Copy to the:

1. The Chief Justice of the Madras High Court, Chennai, Tamilnad
2. The Director General of Police, Tamilnadu
3. The Chief Secretary of Tamilnadu

4. The Superintendent of Police of Ramanathapuram District
5. The District Collector of Ramanathapuram District
6. The UN Special Rapporteur on the right to freedom of peaceful assembly and association, Office of the UN High Commissioner for Human Rights, Geneva
7. The UN Special Rapporteur on the rights of human rights defenders
Frontline Defenders, Dublin, Ireland
8. The World Organization Against Torture, Geneva
9. Forum Asia, Bangkok, Thailand
10. The Asian Human Rights Commission, Hongkong
11. The EU Delegation Office, New Delhi