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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13-10-2026

CORAM

THE HON'BLE MR JUSTICE G.R.SWAMINATHAN

AND

THE HON'BLE MRS.JUSTICE M.D.SUMATHI

WP(MD) No. 29575 of 2026

CNR:{HCMD011465782026}

Case QR

R.A.Jaikumar
4-16A, East Peruvilai,
Peruvilai Post, Nagercoil,
Kanniyakumari District - 629003.

..Petitioner(s)

Vs

1. The Home Secretary
   Government Of Tamil Nadu,
   Chennai - 600009.

2. The District Collector
   Tirunelveli District.

3. The Secretary
   Bar Council Of Tamil Nadu and Puducherry
   Chennai - 600104

4. The Secretary, Advocates Bar Association
   Principal District Court
   Tirunelveli-527002

5. Mr.M. Karunanithi,
   S/o. Muthukrishnan,
   Ex. Addl PP 1st ADJ Court Advocates Bar Association
   No. 20, Shankar Nagar, Muthiah Nagar Extension
   Tirunelveli-627357

..Respondent(s)

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PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, direct the respondents 3 and 4 to take legal action against the 5th respondent on the basis of the petitioner's representation dated 13.07.2026.

For Petitioner(s) : Mr.K.T.K.Janakiram

For Respondent(s) : Mr.K.R.Shivashankari
Additional Government Pleader
for R.1 & R.2

Mr.K.R.Laxman
Standing Counsel for R.3

No Appearance for R.4

ORDER

(Order of the Court was made by G.R.Swaminathan J.)

Heard the learned counsel for the writ petitioner, the learned Additional Government Pleader appearing for the respondents 1 and 2 and the learned Standing Counsel appearing for the third respondent. Issuance of notice to the respondents 4 and 5 is dispensed with.

2.The writ petitioner, who is a practising lawyer, is the de facto complainant in Crime No.219 of 2021 on the file of Asaripallam Police Station. The case was charge-sheeted and is now pending trial before the First Additional District and Sessions Judge, Tirunelveli. The case should have been tried in Kanyakumari district. But, since the de facto

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complainant is a practising lawyer, the Bar Association has passed a resolution forbidding its members from appearing for the accused in the criminal case. In these circumstances, the accused went before the Hon'ble Supreme Court and obtained an order of transfer to Tirunelveli district.

3.Time to turn a bit nostalgic. The Prime Minister Mrs.Indira Gandhi had been assassinated. Pran Nath Lekhi, a high profile lawyer associated with BJP, came forward to defend Satwant Singh, the assassin. The party felt embarrassed. They told him to return the brief. Lekhi was made of sterner stuff. Professional obligations came first. It ranked above party loyalty. He quit the party and fought the case till the bitter end. Another instance deserves recall. One spy scandal rocked the nation during the eighties. Ram Jethmalani, the doughty criminal lawyer, appeared for Coomar Narain, the prime accused. Again, the BJP felt troubled. Ram Jethmalani was its Vice-President. He was given a choice and the great lawyer placed his duty to client above all else. He wrote a stinging piece in the short lived magazine “Lex Et Juris” justifying his decision.

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4.The judgment rendered by Justice Markandey Katju in A.S.Mohammed Rafi Vs State of Tamil Nadu ((2011) 1 SCC 688) must be made a mandatory reading for every Bar Association office-bearer. The following extracts are particularly relevant:

> "12. When the great revolutionary writer Thomas Paine was jailed and tried for treason in England in 1792 for writing his famous pamphlet "The Rights of Man" in defence of the French Revolution the great Advocate Thomas Erskine (1750-1823) was briefed to defend him. Erskine was at that time the Attorney General for the Prince of Wales and he was warned that if he accepts the brief, he would be dismissed from office. Undeterred, Erskine accepted the brief and was dismissed from office. However, his immortal words in this connection stand out as a shining light even today:
> "From the moment that any advocate can be permitted to say that he will or will not stand between the Crown and the subject arraigned in court where he daily sits to practise, from that moment the liberties of England are at an end. If the advocate refuses to defend from what he may think of the charge or of the defence, he assumes the character of the Judge; nay he assumes it before the hour of the judgment; and in proportion to his rank and reputation puts the heavy influence of perhaps a mistaken opinion into the scale against the accused in whose favour the benevolent principles of English law make all assumptions, and which commands the very Judge to be his counsel."
>
> 13. Indian lawyers have followed this great tradition. The revolutionaries in Bengal during British rule were defended by our lawyers, the Indian communists were defended in the Meerut conspiracy case, Razakars of Hyderabad were defended by our lawyers, Sheikh Abdullah and his co-accused were defended by them, and so were some of the alleged assassins of Mahatma Gandhi and Indira Gandhi. In recent times, Dr. Binayak Sen has been defended. No Indian lawyer of repute has ever shirked responsibility on the ground

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that it will make him unpopular or that it is personally dangerous for him to do so. It was in this great tradition that the eminent Bombay High Court lawyer Bhulabhai Desai defended the accused in the INA trials in the Red Fort at Delhi (November 1945-May 1946).

14. However, disturbing news is coming now from several parts of the country where Bar Associations are refusing to defend certain accused persons.

15. The Sixth Amendment to the US Constitution states "In all criminal prosecutions the accused shall enjoy the right … to have the assistance of counsel for his defence".

16. In Powell v. Alabama [77 L Ed 158 : 287 US 45 (1932)] the facts were that nine illiterate young Black men, aged 13 to 21, were charged with the rape of two White girls on a freight train passing through Tennessee and Alabama. Their trial was held in Scottsboro, Alabama, where community hostility towards Blacks was intense. The trial Judge appointed all members of the local Bar to serve as defence counsel. When the trial began, no attorney from the local Bar appeared to represent the defendants. The Judge, on the morning of the trial, appointed a local lawyer who undertook the task with reluctance. The defendants were convicted. They challenged their convictions, arguing that they were effectively denied aid of counsel because they did not have the opportunity to consult with their lawyer and prepare a defence. The US Supreme Court agreed.

17. Writing for the Court, George Sutherland, J. in Powell case [77 L Ed 158 : 287 US 45 (1932)] explained: (L Ed p. 162)

"It is hardly necessary to say that the right to counsel being conceded, a defendant should be afforded a fair opportunity to secure counsel of his own choice. Not only was that not done here, but such designation of counsel as was attempted was either so indefinite or so close upon the trial as to amount to a denial of effective and substantial aid…."

In the same decision Sutherland, J. observed: (L Ed pp. 170-71)

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"What, then, does a hearing include? Historically and in practice, in our own country at least, it has always included the right to the aid of counsel when desired and provided by the party asserting the right. The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence. If that be true of men of intelligence, how much more true is it of the ignorant and illiterate, or those of feeble intellect. If in any case, civil or criminal, a State or Federal Court were arbitrarily to refuse to hear a party by counsel, employed by and appearing for him, it reasonably may not be doubted that such a refusal would be a denial of a hearing, and, therefore, of due process in the constitutional sense."

18. In this connection we may also refer to the legendary American lawyer Clarence Darrow (1857-1930) who was strongly of the view that every accused, no matter how wicked, loathsome, vile or repulsive he may be regarded by society has the right to be defended in court. Most lawyers in America refused to accept the briefs of such apparently wicked and loathsome persons e.g. brutal killers, terrorists, etc. but Clarence Darrow would accept their briefs and defend them, because he was firmly of the view that every person has the right to be defended in court, and correspondingly it was the duty of the lawyer to defend. His defences in various trials of such vicious,

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repulsive and loathsome persons became historical, and made him known in America as the "Attorney for the Damned" (because he took up the cases of persons who were regarded so vile, depraved and despicable by society that they had already been condemned by public opinion) and he became a legend in America (see his biography Attorney for the Damned).

19. In Anastaplo, In re [6 L Ed 2d 135 : 366 US 82 (1961)] Hugo Black, J. of the US Supreme Court in his dissenting judgment praised Darrow and said: (L Ed p. 155)

"… men like Lord Erskine, James Otis, Clarence Darrow, and the multitude of others who have dared to speak in defense of causes and clients without regard to personal danger to themselves. The legal profession will lose much of its nobility and its glory if it is not constantly replenished with lawyers like these. To force the Bar to become a group of thoroughly orthodox, time-serving, government-fearing individuals is to humiliate and degrade it."

20. At the Nuremberg trials, the Nazi war criminals responsible for killing millions of people were yet defended by lawyers.

21. We may also refer to the fictional American lawyer Atticus Finch in Harper Lee's famous novel To Kill a Mocking Bird [Ed.: See the recent discussion of this monumental work in Prejudice — Womb of Injustice by Justice Yatindra Singh, (2010) 9 SCC J-1.] . In this novel Atticus Finch courageously defended a Black man who was falsely charged in the State of Alabama for raping a White woman, which was a capital offence in that State. Despite the threats of violence to him and his family by the racist White population in town, and despite social ostracism by the predominant White community, Atticus Finch bravely defended that Black man (though he was ultimately convicted and hanged because the jury was racist and biased), since he believed that everyone has a right to be defended. This novel inspired many young Americans to take up law as a profession in America. The following words of Atticus Finch will ring throughout in history:

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"Courage is not a man with a gun in his hand. It is knowing you are licked before you begin, but you begin anyway and you see it through no matter what. You rarely win, but sometimes you do."

22. In our own country, Article 22(1) of the Constitution states:

"22. Protection against arrest and detention in certain cases.—(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice."

23. Chapter II of the Rules framed by the Bar Council of India states about "Standards of Professional Conduct and Etiquette", as follows:

"11. An advocate is bound to accept any brief in the courts or tribunals or before any other authority in or before which he proposes to practise at a fee consistent with his standing at the Bar and the nature of the case. Special circumstances may justify his refusal to accept a particular brief."

24. Professional ethics require that a lawyer cannot refuse a brief, provided a client is willing to pay his fee, and the lawyer is not otherwise engaged. Hence, the action of any Bar Association in passing such a resolution that none of its members will appear for a particular accused, whether on the ground that he is a policeman or on the ground that he is a suspected terrorist, rapist, mass murderer, etc. is against all norms of the Constitution, the statute and professional ethics. It is against the great traditions of the Bar which has always stood up for defending persons accused for a crime. Such a resolution is, in fact, a disgrace to the legal community. We declare that all such resolutions of Bar Associations in India are null and void and the right-minded lawyers should ignore and defy such resolutions if they want democracy and rule of law to be upheld in this country. It is the duty of a lawyer to defend no matter what the consequences, and a lawyer who refuses to do so is not following the message of The Gita."

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5.Though the above judgment was asked to be circulated to all the Bar Associations, it is not known if it was done. Circulation is one thing, studying is another. Internalising the principles is what is required. The Kanyakumari Bar Association should not pass such a resolution in future. This is not a judicial directive but an appeal to the conscience of the members of the Bar Association.

6.The petitioner has given a representation containing serious allegations against the fifth respondent herein who was the Prosecutor in this case. According to the petitioner, the fifth respondent did not discharge his duties properly. This writ petition has been filed to direct the Bar Council to initiate disciplinary action against the fifth respondent.

7.Let us catalogue the allegations made by the petitioner. The first charge is that the fifth respondent did not apply for cancellation of the bail granted to the accused even though the Investigation Officer made a written request. When the accused sought handing over of his vehicle's RC book, the Additional Public Prosecutor did not seriously oppose the said request. Certain material records pertaining to this case are currently missing.

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8.We fail to understand as to how the Bar Council can be called upon to set the ball rolling in such circumstances. Only if there are prima facie materials to show that an Advocate is guilty of professional misconduct, the Bar Council can be called upon to look into the complaint and take action. The fifth respondent was the prosecutor for a given period. He is no mouth piece of the Police. Merely because the Investigation Officer recommends that a petition for cancellation of bail should be filed, the Prosecutor is not obliged to abide by that advice. He has to take an independent decision. Whether to mark a document or not and whether to examine a witness or not are to be decided by the Prosecutor and not the Police. The call is his and his alone. A Prosecutor must function fearlessly. If the Bar Council is vested with disciplinary jurisdiction to question the Prosecutor with regard to the conduct of the criminal case, that would ring the death knell for rule of law. In Pakistan, the Army Chief Mr.Munir will decide whether to station the troops in the middle-east without the parliamentary approval. Not so in India. The Army will always play a role subordinate to the civilian leadership. The Police will not lord over the Prosecutor. These larger considerations impel us to throw out the petitioner's complaint at the threshold stage even without ordering notice to the fifth respondent. The only concession that we can record is that in the event of any adverse remark over his

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conduct, the Prosecutor may have to face action at the hands of the Bar Council. But this remark must come through a judicial order. If the Presiding Judge finds something seriously amiss in the Prosecutor's conduct and says so in his order, that can and that alone can furnish the cause of action for the Bar Council to wield the whip.

9.The petitioner need not worry about the fate of the case. The prosecution is no longer in the hands of the fifth respondent. Gone are the times when the party at the helm of affairs would want the best talent. We also in a limited way follow the "Spoils system". The legendary Seervai was the Advocate General for more than 16 years. Chief Ministers came and went. But Seervai held on. In our own state, Alladi Krishnaswamy Ayyar held the office for a very long time. But that is no longer the case. Once change takes place at the top, the Law Officers need to exit. Though rules have been framed to ensure transparency, we know how the system works. We know in a few cases that the District Collectors simply endorsed the list submitted by the District Secretaries of the party. But then, some intervention took place and we hope that it was for the better. Karunanithi, the fifth respondent was a political appointee and naturally he had to be shown the door with the change of guard. Though he is no longer associated with the case in which the petitioner is

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the complainant, the petitioner is not willing to let him go. He continues to hound him. Probably because the petitioner wants to send signals to the incumbent. We would advise the incumbent to ignore such signals. He must remember that he is a Prosecutor. He is not there to persecute the accused. The Prosecutor is not concerned with the private dispute between the complainant and the accused. His only role is to establish the crime said to have been committed by the accused. Even in the course of discharging his duty, if the Prosecutor finds that there is any material favouring the accused, he has to disclose the same. He must put up a fair fight. Bhima hit Dhuriyodhana beneath the waist. That was an egregious breach of the rules of combat. But a Prosecutor should never do that. We have sterling examples. The great V.L.Ethiraj, who was appointed as the Special Prosecutor in Emmanual Sekaran case, did not hesitate to tell the Court that there was no case against Shri Muthuramalinga Thevar. A Prosecutor must read the papers thoroughly and conduct the case competently. The Prosecutor will not parrot-like echo the Police version.

10.Let us come back to the case on hand. The petitioner's allegations made against the fifth respondent would not fall within the ambit of professional misconduct so as to attract the disciplinary jurisdiction of the third respondent. We do not find any ground to issue any direction.

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11.This Writ Petition stands dismissed. No costs.

(G.R.S.,J.) (M.D.S.,J.)
13-10-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

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To

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4. The Secretary, Advocates Bar Association
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Copy to

The First Additional District and Sessions Judge, Tirunelveli.

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G.R.SWAMINATHAN, J.
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