

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

TUESDAY, THE 20TH DAY OF OCTOBER 2015/28TH ASWINA, 1937

WP(C).No. 19735 of 2014 (N)

PETITIONER(S):

**GOPAKUMAR K.V AGED 47 YEARS
S/O.P.K.VASUDEVAN NAIR, ROHINI, TRA-145
THIRUMALA P.O., THIRUVANANTHAPURAM.**

BY ADV. SRI.SHAJIN S.HAMEED

RESPONDENT(S):

- 1. STATE OF KERALA
REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM PIN CODE: 695001**
- 2. LEELAKUMARI
SREEVAIKUNTAM, C.G.O.COMPLEX, POONKULAM WARD
THIRUVANANTHAPURAM TALUK, THIRUVANANTHAPURAM DISTRICT
PIN : 695 522.**

**R2 BY ADV. SRI.R.T.PRADEEP
R1 BY ADV.T.J.MICHAEL, GOVERNMENT PLEADER**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20-10-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS:

- EXT.P-1: COPY OF THE COMPLAINT DATED 17.10.2013 FILED BY THE 2ND
RESPONDENT BEFORE THE CHAIRPERSON, STATE HUMAN RIGHTS
COMMISSION
- EXT.P-2: COPY OF THE PROCEEDING DATED 23.10.2013 OF THE KERALA STATE
HUMAN RIGHTS COMMISSION.
- EXT.P-3: COPY OF THE ORDER DATED 11.12.2013 OF THE KERALA STATE
HUMAN RIGHTS COMMISSION.
- EXT.P-4: COPY OF THE LETTER DATED 1.1.2014 ISSUED FROM THE OFFICE OF
THE KERALA STATE HUMAN RIGHTS COMMISSION
- EXT.P-5: COPY OF THE AGREEMENT EXECUTED BETWEEN THE PETITIONER
AND 2ND RESPONDENT.

RESPONDENT(S)' EXHIBITS:

- EXT.R2(A): COPY OF AGREEMENT DATED 07.11.2012
- EXT.R2(B): COPY OF ENDORSEMENT OF PAYMENT OF RS.25,000/- ON THE
REVERSE SIDE OF EXT.R2(A)
- EXT.R2(C): COPY OF WRITTEN UNDERTAKING OF PETITIONER DATED 26.08.2013
- EXT.R2(D): COPY OF CERTIFICATE DATED 30.07.2010 BY DEPARTMENT OF
CARDIOLOGY
- EXT.R2(E): COPY OF PROCEEDINGS OF KERALA HUMAN RIGHTS COMMISSION
DATED 07.08.2014

//TRUE COPY//

P.A. TO JUDGE

JV

C.R.

ANIL K. NARENDRA, J.

W.P.(C) No.19735 of 2014

Dated this the 20th day of October, 2015

JUDGMENT

The petitioner, who is the respondent in Ext.P1 complaint filed by the 2nd respondent herein, before the Kerala State Human Rights Commission (hereinafter referred to as 'the Commission') has filed this writ petition seeking a writ of certiorari to quash Ext.P1 complaint and seeking a declaration that the said complaint is not maintainable before the Commission. He has also sought for a writ of certiorari to quash Ext.P3 proceedings dated 11.12.2013 passed by the Commission in Ext.P1 complaint.

2. Going by the averments in Ext.P1 complaint, the 2nd respondent's husband who was an Army Captain died 18 years back while serving the nation, leaving behind herself and two daughters, who are now pursuing their medical and engineering studies at Bangalore. In order to meet the educational expenses of her children, the 2nd respondent was constrained to sell her dwelling house and decided to shift residence to a tenanted premises. The 2nd respondent entrusted Rs.3,00,000/- to the

petitioner herein and his wife Ajitha Rani, on execution of a promissory note and cheque by the petitioner as security, for taking a residential premises on mortgage ('otti'). But, they never handed over possession of the residential premises to the 2nd respondent and thereby cheated her. The cheque on presentation for encashment was dishonoured with an endorsement 'insufficiency of funds'. The 2nd respondent was unaware of the time limit prescribed for filing a complaint before the Court. She believed the repeated assurance made by the petitioner and his wife that, the amount will be repaid at the earliest. On the assurance made by the the petitioner and his wife, when the 2nd respondent went to their house on 15.08.2013, she was abused with filthy language and brutally assaulted. She took treatment in the hospital and thereafter, filed complaint before the City Police Commissioner, which was forwarded to the Circle Inspector, Museum Police Station and the Sub Inspector, Poojappura Police Station. On 26.08.2013, in the deliberations held at the Poojappura Police Station, in the presence of the Circle Inspector and Sub Inspector, the 2nd respondent was constrained to withdraw the complaint on receiving Rs.50,000/-, on the

assurance that the balance amount of Rs.2,50,000/- will be paid before 10th of September. But the said amount was not paid as agreed upon. When the 2nd respondent demanded payment of the said amount, she was threatened to be killed in a hit and run motor accident, without leaving any evidence and if that happens, there is none to take care of her children.

3. The 2nd respondent has stated in Ext.P1 complaint that, she is not in a position to collect the hospital records of the treatment she had undergone and that, the time limit for approaching the court is also over. She is more concerned about return of her money than punishing those who harassed her, since she is in dire need of that amount for the marriage and other expenses of her daughters. Therefore, she prayed for an appropriate orders of the Commission, on humanitarian grounds, to get back the amount from the petitioner and his wife. The 2nd respondent has also stated in Ext.P1 complaint that, she had earlier approached the Commission on 21.08.2013 in HRMP No.5589/13/TVM, but the said complaint was not entertained on the ground that the Commission shall not entertain complaints relating to monetary disputes, which has to

be redressed by filing a complaint before Court, and that in the complaint before the Commission there is no allegation that, she had filed any complaint before Police alleging physical attack. Therefore, she was directed to file a complaint before Police and was permitted to approach the Commission again if no action is taken by the Police, along with wound certificate and treatment records from the Medical College.

4. Based on Ext.P1 complaint, the Commission issued Ext.P2 notice to the petitioner asking him to file objection, if any, within 05.12.2013 and the matter was posted on 11.12.2013. On receipt of notice, the petitioner appeared before the Commission and orally submitted his objections. Going by the averments in the writ petition, the petitioner contended before the Commission that the 2nd respondent is a money lender from whom he borrowed an amount of Rs.2,00,000/- for which he issued a cheque and promissory note. Later, the 2nd respondent presented the cheque for encashment, but the same was dishonoured. The petitioner was regularly paying monthly interest. When the cheque was dishonoured, the 2nd respondent filed a complaint before the Police and thereupon, the petitioner

was forced to execute an agreement in the Police Station after paying Rs.50,000/-. According to the petitioner, without considering the maintainability of Ext.P1 complaint, the Commission directed him vide Ext.P3 proceedings dated 11.12.2013 to repay the entire principal amount on or before 31.03.2014, and till then to continue the monthly payment of Rs.8,000/-. Ext.P3 proceedings passed by the Commission was forwarded to him along with Ext.P4 covering letter dated 01.01.2014. Ext.P5 is a copy of the agreement executed between the petitioner and the 2nd respondent, based on which the Commission passed Ext.P3 order. It is in such circumstances, the petitioner has filed this writ petition seeking various reliefs, contending that, Ext.P1 complaint filed before the Commission is not maintainable under the Protection of Human Rights Act, 1993 (hereinafter referred to as 'the Act') and that Ext.P4 order passed by the Commission is absolutely without any authority of law. .

5. A counter affidavit has been filed on behalf of the 2nd respondent, reiterating the allegations raised in Ext.P1 complaint. The 2nd respondent contended further that, the petitioner executed Ext.R2(a) agreement dated 07.11.2012, agreeing to

return Rs.3,00,000/- in three installments on 31.12.2012, 28.02.2013 and 31.08.2013, respectively. Instead, he paid an amount of Rs.25,000/- on 03.01.2013, agreeing to pay another installment of Rs.75,000/- on 20.01.2013 and an endorsement to that effect was also made on the reverse side of Ext.R2(a), which is evident from Ext.R2(b). On 26.08.2013, in the deliberations held at the Poojappura Police Station, in the presence of the Circle Inspector and Sub Inspector, she was constrained to withdraw the complaint on payment of Rs.50,000/-, on executing Ext.R2(c) written undertaking, in which the petitioner has undertaken to pay the balance amount of Rs.2,50,000/- within three months. However, the petitioner did not pay the amount as agreed upon. When the 2nd respondent demanded repayment, she was brutally manhandled by the petitioner and his wife. According to the 2nd respondent, the threat and intimidation from their side is nothing but human rights violation. The Police has also not taken any action on the complaint made by her respondent, and it was in such circumstances, she filed Ext.P1 complaint before the Commission. On receipt of Ext.P2 notice, the petitioner approached her and paid a sum of Rs.8,000/-

towards interest on 18.11.2013 and agreed to pay interest at the same rate on every month till the balance amount is paid on or before 31.3.2014. According to the 2nd respondent, she put her signature in Ext.P5 without knowing the exact contents of the same. Thereafter, the petitioner personally appeared and agreed before the Commission on 11.12.2013 that, he had paid interest of Rs.8,000/- on 18.11.2013 and shall continue to pay interest at the same rate on every month till the balance amount is paid on or before 31.3.2014, which undertaking was recorded by the Commission in Ext.P3 proceedings. It is in order to wriggle out from Ext.P3 proceedings dated 11.12.2013, the petitioner has approached this Court in this writ petition on 31.7.2014 and obtained an order of stay, which was produced before the Commission on 7.8.2014. In view of the order of stay, the Commission adjourned the matter by Ext.R2(e) proceedings. Therefore, the 2nd respondent would contend that, none of the contentions raised in the writ petition are legally or factually tenable and that the petitioner is not entitled for the discretionary remedy under Article 226 of the Constitution of India.

6. The issues that arise for consideration in this writ petition is as to the maintainability of Ext.P1 complaint filed by the 2nd respondent before the Kerala State Human Rights Commission and also the legality of Ext.P3 proceedings issued by the Commission.

7. The Protection of Human Rights Act, 1993 (hereinafter referred to as 'the Act') was enacted by the Central Government to provide for the constitution of a National Human Rights Commission, State Human Rights Commissions in States and Human Rights Courts for better protection of human rights and for matters connected therewith or incidental thereto. Clause (d) of Section 2 of the Act define 'human rights' to mean the rights relating to life, liberty, equality and dignity of the individual guaranteed by the constitution or embodied in the International Covenants and enforceable by courts in India. Chapter III of the Act deals with the functions and powers of the Commission, namely the National Human Rights Commission and Chapter IV deals with the procedure relating to inquiry in to complaints etc. Similarly, Chapter V of the Act deals with State Human Rights Commissions. Section 21 deals with constitution of the State

Human Rights Commissions. As per sub-section (5) of Section 21 of the Act, a State Commission may inquire into violations of human rights only in respect of matters relatable to any of the entries enumerated in List II and List III in the Seventh Schedule to the Constitution. The first Proviso to sub-section (5) provides that, if such matter is already being inquired into by the Commission or any other Commission duly constituted under any law for the time being in force, the State Commission shall not inquire into the said matter.

8. Going by Section 29 of the Act, the provisions of Sections 9, 10, 12, 13, 14, 15, 16, 17 and 18 shall apply to a State Commission and shall have effect, subject to the modifications enumerated in clauses (a) to (d) of Section 29. As per sub-section (2) of Section 10, subject to the provisions of the Act and the rules made thereunder, the Commission shall have the power to lay down regulations by its own procedure. Similarly, as per clause (a) of Section 12, the Commission shall inquire, suo-motu or on a petition presented to it by a victim or any person on his behalf or on a direction or order of any court, into complaint of violation of human rights or abetment thereof;

or negligence in the prevention of such violation, by a public servant. As per clause (b) of Section 12, the Commission shall intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court.

9. Going by sub-section (1) of Section 13, the Commission shall, while inquiring into complaints under the Act have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908 and in particular in respect of the matters enumerated in clauses (a) to (f) of sub-section (1). Section 14 of the Act deals with investigation and Section 17 deals with inquiry into complaints. Section 18 of the Act, which deals with steps during and after inquiry, reads thus;

"18. Steps during and after inquiry:- The Commission may take any of the following steps during or upon the completion of an inquiry held under this Act, namely:--

(a) where the inquiry discloses the commission of violation of human rights or negligence in the prevention of violation of human rights or abetment thereof by a public servant, it may recommend to the concerned Government or authority--

(i) to make payment of compensation or damages to the complainant or to the victim or the members of

his family as the Commission may consider necessary;

(ii) to initiate proceedings for prosecution or such other suitable action as the Commission may deem fit against the concerned person or persons;

(iii) to take such further action as it may think fit;

(b) approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary;

(c) recommend to the concerned Government or authority at any stage of the inquiry for the grant of such immediate interim relief to the victim or the members of his family as the Commission may consider necessary;

(d) subject to the provisions of clause (e), provide a copy of the inquiry report to the petitioner or his representative;

(e) the Commission shall send a copy of its inquiry report together with its recommendations to the concerned Government or authority and the concerned Government or authority shall, within a period of one month, or such further time as the Commission may allow, forward its comments on the report, including the action taken or proposed to be taken thereon, to the Commission;

(f) the Commission shall publish its inquiry report together with the comments of the concerned Government or authority, if any, and the action taken or proposed to be taken by the concerned Government or authority on the recommendations of the Commission."

10. In exercise of the powers conferred under Section 10 (2) read with Section 29 of Act, the State Government enacted the Kerala State Human Rights Commission (Procedure) Regulations 2001 (hereinafter referred to as 'the Regulation'). Clause (e) of Regulation 2 defines 'complaint' to mean all petitions or communications received by the Commission from a victim or any other person on his behalf in person or by post or by telegram or by fax or by any other means whatsoever alleging violation of human rights or abetment thereof or negligence in the prevention of such violation by a public servant of all or any of the human rights defined in clause (d) of sub-section (1) of Section 2 read with sub-section (5) of Section 21 of the Act. Regulation 16, which deals with nature of complaints, provides that every complaint should disclose a complete picture of the matter complained of and disclose the name and address of the respondent. Regulation 16 provides further that, the Commission may, if it consider necessary, call for further relevant information from the complainant; direct the complainant to file affidavit in support of the complaint; obtain sworn statements of the complainant; and take statement of the complainant by issuing

Commission for the purpose or by any other means considered necessary.

11. Regulation 17 states that, the Commission may dismiss inlimine complaints of the nature enumerated in Clause (a) to (l). Clause (g) provides that, the Commission may dismiss inlimine complaints if the allegations do not raise any violation of human rights. Clause (i) provides further that, the Commission may dismiss inlimine complaints if the matter is covered by a Judicial verdict/decision of the National Commission or a State Commission. Similarly, going by clause (l), the Commission may dismiss the complaint inlimine where the matter raised is outside the purview of the Commission or on any other ground.

12. A reading of the aforesaid provisions in the Regulations make it explicitly clear that there is no prescribed form or format for filing a complaint before the Commission and even a communication received by the Commission from a victim or any other person on his behalf in person or by post or by telegram or by fax or by any other means whatsoever alleging violation of human rights or abetment thereof or negligence in the prevention of such violation by a public servant of all or any

of the human rights defined in clause (d) of sub-section (1) of Section 2 read with sub-section (5) of section 21 of the Act can be treated as a complaint. Similarly, in a case in which a complaint received by the Commission does not disclose a complete picture of the matter complained of, it would be open to the Commission to call for further relevant information from the complainant or direct the complainant to file affidavit in support of the complaint, etc.

13. In the case on hand, Ext.P1 complaint contains allegations of human rights violation as well as negligence on the part of the Police officials in the prevention of such violation. When the allegations contained in Ext.P1 complaint makes out a case of human rights violation or negligence on the part of a public servant in the prevention of such violation, which the Commission is empowered to inquire into, under clause (a) of Section 12 of the Act, either suo-motu or on a petition presented to it by a victim or any person on his behalf or on a direction or order of any court, the mere fact that the relief sought for in that complaint falls outside the purview of the Commission would not make such complaint one falling under clause (I) of Regulation

17, which the Commission may dismiss in limine.

14. Keeping in mind an object sought to be achieved by the constitution of the Human Rights Commission and also the procedure prescribed under the Regulations, conclusion is irresistible that the rule of pleadings in its strict sense has no application in a complaint filed before the said Commission. Therefore, based on the complaint made by a person, if the Commission came to a prima facie conclusion that the allegations contained therein makes out a case of violation of human rights, the Commission is fully justified in proceeding with that complaint irrespective of the nature of relief sought for in that complaint, and may take appropriate steps, in terms of Section 18 of the Act. In that view of the matter, merely for the reason that the reliefs sought for in Ext.P1 complaint falls outside the purview of the Commission, it cannot be contended that the said complaint is not maintainable before the Commission. Based on the allegations regarding human rights violation contained in that complaint, the Commission shall have the power to conduct inquiry in terms of Section 17 and to take appropriate steps in terms of Section 18 of the Act. In the result, the prayer sought

for in this writ petition to quash Ext.P1 complaint filed by the 2nd respondent before the Commission as not maintainable, can only be rejected.

15. The next issue to be decided is as to the legality or otherwise of Ext.P3 proceedings of the Commission. A reading of Ext.P3 proceedings would show that when Ext.P1 complaint was taken up for consideration on 11.12.2013, the petitioner gave an undertaking that he shall pay the amount in terms of Ext.P5 agreement to the 2nd respondent and the Commission after recording the said undertaking given by the petitioner directed him to obtain receipt for such payment from the 2nd respondent and produce it before the Commission. Though Ext.P3 proceedings is dated 11.12.2013, the petitioner filed this writ petition only on 31.07.2014, i.e., nearly seven months after the issuance of Ext.P3. In the writ petition no reasons whatsoever have been stated for explaining the delay of nearly seven months in approaching this Court challenging the said proceedings of the Commission. Further, in the writ petition the petitioner has no case that the undertaking given before the Commission, which is reflected in Ext.P3 proceedings, is not voluntary. In such

circumstances, the belated challenge made in this writ petition against Ext.P3 proceedings of the Commission can only be rejected. The Commission shall conduct inquiry on Ext.P1 complaint in terms of Section 17 of the Act and take appropriate steps in terms of Sections 17 and 18 of the Act.

In the result, this writ petition fails and the same is dismissed.

JV

sd/-
ANIL K. NARENDHAN,
JUDGE