

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 13.02.2015

CORAM:

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THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN.**Cr1.R.C(MD)No.765 of 2013****and****M.P. (MD)No.1 of 2013**

Kalaniyappan

... Petitioner / Petitioner/A1

Vs

Elavarasan

...Respondent/ Respondent /
Complainant

Prayer: Civil Revision Case filed under Section 397 read with 401 of the Code of Criminal Procedure, to call for the records of the learned Principal Sessions Judge, Thanjavur in Cr.M.P.No.3891 of 2013 in H.R.C.No.2 of 2011 by which, dismissing the Discharge Petition by an order dated 07.10.2013 and set aside the dismissal order of the court below and allow the Criminal Revision.

For Petitioner : Mr.M.Karunanithi
For Respondent : Mr.G.Karnan

ORDER

By consent, the Revision itself is taken up for final disposal.

2.The petitioner is arrayed as first accused in H.R.C.No.2 of 2011 on the file of Court of Principal Sessions Judge, Thanjavur and he filed a Petition for discharge in Cr.M.P.No.3891 of 2013 contending among other things that on the very same set of allegations, the respondent herein has invoked the jurisdiction of State Human Rights Commission in Case No.800/2011/C2 and it is pending adjudication and if the trial is proceeded and adjudicated, his defence would stand exposed and more over, it amounts to parallel proceedings. The said petition after contest came to be dismissed on 07.10.2013 and aggrieved by the same, the first accused has filed this revision.

3.Mr.M.Karunanithi, the learned counsel appearing for the revision petitioner would vehemently contend that admittedly the case instituted by the respondent before the State Human Rights



Commission is on the very same set of allegation and the present criminal prosecution is also on same set of facts and the said fact has not been taken into consideration by the trial Court while dismissing the petition for discharge and in any event, it amounts to double jeopardy.

4. The Court heard the submissions of Mr.Mr.M.Karunanithi, the learned counsel appearing for the revision petitioner and Mr.G.Karnan, the learned counsel appearing for the respondent and perused the materials available on record.

5. The learned counsel has invited the attention of this Court to the Judgment of this Court in **Rajesh Das, I.P.S., Vs. Tamil Nadu State Human Rights Commission** reported in (2010 (5) CTC 589), wherein it has been held that the order or recommendation made by the Commission is only recommendatory in nature on the facts of the case found. Further held that such a recommendation made by the Human Rights Commission not binding on the parties. However, if the concerned Government is an obligation to consider the recommendation of the Commission and to act upon the same to take forward the objects of the Human Rights Act, the International Covenants and Conventions in the back drop of fundamental rights guaranteed under the Indian Constitution, within a reasonable time.

6. A perusal of the impugned order would also disclose that the trial Court has arrived at the decision in the petition for discharge as its touch upon merits of the complaint and truth and validity of the said application at the time of discharge cannot be considered and it can be done only after full-fledged trial.

7. This Court, on an independent application of mind and the materials placed before it, is of the considered view that there is no error apparent in the reason assigned by the trial Court for dismissing the discharge petition. It is further alleged by the learned counsel appearing for the petitioner that the respondent herein cannot be represented by Special Public Prosecutor, Human Right Commission, Thanjavur, as he is prosecuting the case in his individual capacity. The said issue is left open to be decided in appropriate case. The learned counsel appearing for the respondent would submit that the respondent will extent full and maximum co-operation to enable the State Human Rights Commission to dispose of the case in No.800/2011/C2 and the learned counsel appearing for the petitioner / respondent in the said case would also submit that the petitioner, who is arrayed as respondent, will also extent his maximum co-operation and the said submission, on instruction, is placed on record.



8. In the result, the Criminal Revision Case is dismissed subject to the above observation. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar(T & P)

/True Copy/

Sub Assistant Registrar

To

The Special Court for Human Rights Cases cum
The Principal Sessions Judge,
Thanjavur.

Copy to:

The Section Officer,
Criminal Section Record,
Madurai Bench of Madras High Court, Madurai

+1cc to Mr. G.Karnan, Advocate Sr.No.6702

mpk

AA/25.02.2015/3p- 4c/

Cr1.R.C(MD)No.765 of 2015

13.02.2015