



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE B.GOKULDAS

W.P(MD)No.13688 of 2016
and
W.M.P.(MD)Nos.10193 and 10194 of 2016

Sivakumar : Petitioner

Vs.

1. The Member,
The State Human Right Commission,
Tamil Nadu,
No.143, P.S.Kumarasamy Raja Salai,
Greenways Road,
Chennai-28.

2. The Principal Secretary to the Government,
Home, Prohibition & Excise Department,
Secretariat, Chennai-9.

3. Thiru.U.S.Karuppaiah : Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records pertaining to the impugned order issued by the Hon'ble Member, State Human Rights Commission, Tamil Nadu, the first respondent made in SHRC Case No.4429/2008, dated 25.02.2016 and quash the same.

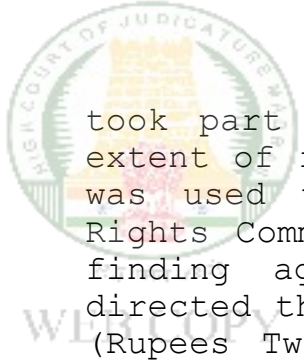
For Petitioner : Mr.B.Jameel Arasu

O R D E R

[Order of the Court was made by K.K.SASIDHARAN, J.]

INTRODUCTORY:

The petitioner registered a false case against the third respondent and thereafter, took him to a market where he was doing <https://hcservicesreports.gov.in/hcservices/> by permitting him to wear only an underwear and assaulted in full public view. The Assistant Commissioner of Police and Inspector of Police also were there with the petitioner and actively



took part in the illegal action. The petitioner has gone to the extent of fabricating records to make it appear as if minimum force was used while arresting the third respondent. The State Human Rights Commission, on the basis of materials, arrived at a factual finding against the petitioner and other police officers and directed the Government of Tamil Nadu to pay a sum of Rs.2,00,000/- (Rupees Two Lakhs only) to the third respondent as compensation. Even though there was no observation that the amount shall be recovered from the concerned police officers, still the petitioner has come up with this Writ Petition to quash the order, directing payment of compensation to the third respondent on account of human rights violation.

BRIEF FACTS:

2. The third respondent preferred a complaint before the State Human Rights Commission, Tamil Nadu, holding that he was implicated in a false case by the petitioner and put him in remand after removing his clothes. Thereafter, he was taken to Gandhi Market Arch in a van with handcuff. He was beaten indiscriminately in the presence of public. The third respondent alleged that he was not given proper treatment. He was produced before the learned Magistrate on a false charge and remanded to custody. Subsequently, the complainant himself appeared before the learned Magistrate and deposed that he has not preferred any such complaint against the third respondent. The learned Magistrate, therefore, granted him bail. Thereafter, the third respondent preferred a complaint before the State Human Rights Commission alleging human rights violation.

3. Before the State Human Rights Commission, the petitioner and two other officers contended that there was no such human rights violation. According to the petitioner, a complaint was preferred by Thiru.P.Mani against the third respondent and his brother and a case in Crime No.833 of 2007 was registered before the Gandhi Market Police Station, Trichy. Since the third respondent was an accused, he was arrested and produced before the Magistrate. The third respondent resisted his arrest and as such, the police used mild force. The petitioner and other two police officers maintained that there was no human rights violation, so as to give a cause of action to the third respondent to claim compensation.

4. The third respondent produced independent witnesses to prove his case of human rights violation. The petitioner and the other two police officers examined R.W.1 to demonstrate that there was no such incident of beating by taking the third respondent to a public market.

5. The State Human Rights Commission considered the complaint, in the light of the defence taken by the petitioner and the evidence adduced by the respective parties and arrived at a clear conclusion that there was a grave violation of human rights of



the third respondent and as such, the State is liable to pay him compensation. Feeling aggrieved, the petitioner, who was the third respondent in the complaint, is before this Court.

SUBMISSIONS:

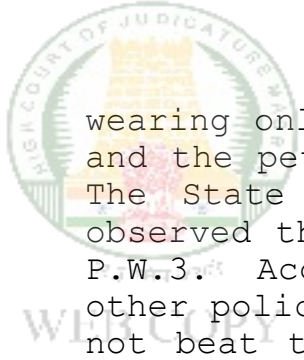
6. The learned counsel for the petitioner vehemently contended that there was no evidence adduced by the third respondent to show that the police fabricated a false case against him and violated his human rights. According to the learned counsel, the police acted, pursuant to the complaint preferred against the third respondent. Therefore, the complaint preferred by the third respondent before the Human Rights Commission for compensation was not maintainable.

DISCUSSION:

7. The background facts indicates that the third respondent settled a dispute involving Thiru.P.Mani, the *defacto* complainant in Crime No.833 of 2007 on the file of Gandhi Market Police Station and another person. The complainant was intimidated by Thiru.Sathaiyan, brother of the third respondent. The complainant, therefore, preferred a complaint against Sathaiyan. There was no complaint against the third respondent. The third respondent went to the Police Station along with the complainant. The petitioner and the Inspector of Police scolded the third respondent indecently, as according to them, the third respondent has been settling the disputes among the vendors to the exclusion of police. The Inspector of Police used unparliamentary language and thereafter, directed the police personnel to put the third respondent in lock-up. He was stripped off his dress except underwear and detained at the lock-up from 10.00 a.m., to 04.00 p.m., on 27.11.2007. Thereafter, he was taken to the market in a van without permitting him to wear dress. The public witnessed the barbaric act. The evidence adduced before the State Human Rights Commission clearly shows that the third respondent was beaten in full public view.

8. The complainant in Crime No.833 of 2007 himself appeared before the Human Rights Commission and deposed as P.W.2. P.W.2 corroborated the evidence of P.W.1 and went to the extent of saying that the police fabricated records to make it appear as if he preferred a complaint against the third respondent. According to P.W.2, the complaint was only against the brother of third respondent. P.W.2 further deposed that it was only the third respondent who was instrumental in settling the dispute and as such, he has absolutely no grievance against him. It was the very same P.W.2, who appeared before the learned Magistrate and made a statement on oath that he has not preferred any complaint against the third respondent and as such, he should be released on bail.

9. Before the State Human Rights Commission, P.W.3 was examined to prove that the police took the third respondent to the market handcuffed. The third respondent was taken to the market



wearing only underwear and he was beaten by the Inspector of Police and the petitioner along with the Assistant Commissioner of Police. The State Human Rights Forum scanned the evidence of P.W.3 and observed that nothing was brought out from the cross-examination of P.W.3. According to the Human Rights Commission, the petitioner or other police officers have not even suggested to P.W.3 that they did not beat the complainant at the place, time and in the manner as deposed by him. The third respondent also examined the medical officers to demonstrate that he sustained injuries.

10. The petitioner and the other two police officers examined R.W.1 to prove that there was no such incident. The evidence of R.W.1 was not consistent. Though R.W.1 claimed that he was also a vendor, the fact remains that the said witness could not even identify the third respondent or the other witnesses. In fact, R.W.1 admitted that the police used to book cases against him and they obtained signature in blank papers and even the proof-affidavit was prepared only by them by making use of the blank papers.

11. The Inspector of Police, in his evidence as R.W.3, made an attempt to justify the injury sustained by the third respondent by stating that he resisted the arrest and hence, minimum force was used to effect the arrest. The Human Rights Commission found that there was no such resistance made by the third respondent recorded in the remand report marked as Ex.R.5. Similarly, there was no mention of any kind of injury sustained by the third respondent in the arrest memo marked as Ex.R.1. The Commission found fabrication of records, at the instance of the police, to make it appear as if there was resistance during the time of arrest. The following observation made by the Commission would falsify the defence taken by the petitioner and the two other police officers:

"24. But the 2nd Respondent while giving evidence as RW3 would not say that when he attempted to arrest Thiru Karuppaiah he resisted the same and hence he used minimum force to effect arrest. On the other hand, the 2nd Respondent would say in his evidence that when taking them into custody minimum force necessary to effect arrest was use. He kept silent as to whether the arrestee resisted the arrest or refused to come into his custody. It is not always necessary to use any force be it minimum or otherwise while effecting arrest of any person. If at all the Complainant Thiru Karuppaiah resisted his arrest by the 2nd respondent then the 2nd respondent as RW3 should have specifically mentioned in his proof affidavit that Thiru Karuppaiah resisted arrest and hence he was constrained to use minimum force to effect arrest.

25. At this juncture, if we look at the documents filed by the Respondents themselves it will



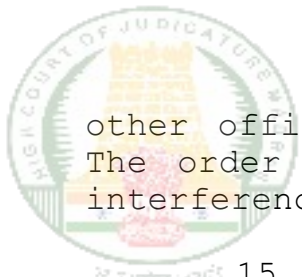
falsify the claim of the 2nd Respondent. These documents are Ex.R1 which is the arrest memo, Ex.R2 which is the extract of PSR Ex.R5 which is a copy of the remand report in respect of the Complainant Thiru Karuppaiah and his brother Thiru Sathaiyan. In Ex.R1 arrest memo there is a column No.9 which requires recording of simple or grievous injuries found on the body of the arrestee. But in Ex.R1 there is no mention of any injury sustained by the arrestee Thiru Karuppaiah. Similar is the recordings in Ex.R2 Prisoners Search Register wherein also no mention of the injuries noticed on the body of the arrestee Thiru Karuppaiah. Ex.R5 is the copy of the remand report in respect of the Complainant Thiru Karuppaiah. The contents of Ex.R5 commenced from 08.00 AM on 27.11.2007 and ended with the happenings at about 13.00 Hrs. Every sequence of event was mentioned chronologically in Ex.R5. If so, the alleged resisting on the part of the arrestee and the use of minimum force by the arresting officer should have been mentioned when the factum of arrest was narrated in Ex.R5 remand report. But the factum of using minimum force at the time of arrest was subsequently written by way of interpolation at the last line and in between two paragraphs of the remand report. This also strengthens the story of the Complainant and weakens the defence of the 2nd Respondent."

12. The Commission passed the impugned order on the basis of evidence adduced by the third respondent. The petitioner now wanted this Court to re-appreciate those materials for the purpose of taking a different view.

13. The memorandum of grounds does not indicate any kind of procedural violation. The jurisdiction of the Court in a matter of this nature is very limited. It is not open to the Court to analyse the evidence recorded by the Commission as if it is an appellate authority and arrive at a different conclusion on facts.

CONCLUSION:

14. The petitioner and two other police officers misused their power and implicated the third respondent in a false case. The complainant in Crime No.833 of 2007, who is also doing the business in the very same market, deposed against the petitioner and two other police officers. Even P.W.3, who is also a trader doing business in the very same market, deposed against the petitioner and the other police officers, who are the jurisdictional police officers. Their evidence is cogent, consistent and trustworthy. The Commission was, therefore, fully justified in placing reliance on the said evidence to arrive at a finding that the petitioner and two



other officers violated the human rights of the third respondent. The order passed by the Commission, therefore, does not call for interference.

15. In the upshot, we dismiss the Writ Petition. No costs. Consequently, the connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar (AE)

/True Copy/

Sub Assistant Registrar

To

1. The Member,
The State Human Right Commission,
Tamil Nadu,
No.143, P.S.Kumarasamy Raja Salai,
Greenways Road,
Chennai-28.

2. The Principal Secretary to the Government,
Home, Prohibition & Excise Department,
Secretariat, Chennai-9.

+ 1 CC TO MR.B.JAMEEL ARASU, ADVOCATE IN SR No. 41376
+ 1 CC TO SPECIAL GOVERNMENT PLEADER, IN SR No. 41219

SML

TE/ARK-PV : 08/08/2016 : 6P/5C

Order made in
W.P (MD) No.13688 of 2016
and
W.M.P. (MD) Nos.10193 and 10194 of 2016
Dated:-
01.08.2016