

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:03.08.2017

Coram

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL
AND
THE HONOURABLE Mr. JUSTICE P.D.AUDIKESSAVALU

W.P.No.14942 of 2015 &
M.P.Nos.1 & 2 of 2015

P.Navaneethan

.. Petitioner

Vs.

1. The State Human Rights Commission,
Tamil Nadu, 'Thiruvaram',
No.143, P.S.Kumarasamy Raja Salai,
(Greenways Road), Chennai-600 028.

2. The Deputy Commissioner of Police,
Mylapore,
Chennai-600 004.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari calling for the records pertaining to the order of the First Respondent / State Human Rights Commission in SHRC Case No.920 of 2015 dated 24.02.2015 and quash the same.

For Petitioner : Mr.C.K.M.Appaji

For Respondent : Mr.K.S.Sri Giriprasad for R1
Mr.M.Elumalai for R2

OR DE R

[Order of the Court was made by M.VENUGOPAL, J.]

The Petitioner has preferred the instant Writ Petition praying for passing of an order by this Court in calling for the records relating to the order of the State Human Rights Commission, Tamil Nadu in SHRC case No.920 of 2015 and to quash the same.

2.Heard both sides. By consent, the main writ petition itself is taken up for final disposal.

3.According to the Petitioner, he is a Post-graduate (M.Com., M.Phil) working as Information Officer, Information Centre, Annamalai University Distance Education Department,

Bathalgundu, Dindugal District. On 25.03.2010, he got married to one Kohila and commenced matrimonial life in his house. It appears that right from the beginning, there was a misunderstanding in existence at the instance of the in-Laws. Moreover, on 19.11.2010, his wife had left along with her parents, taking all her jewels and belongings from the matrimonial house. On 28.02.2011, a female child was born at Madurai. He filed a petition HMOP No.62 of 2013 on the file of the Sub Court, Theni, seeking Restitution of Conjugal right. His wife filed a complaint to counter the matrimonial proceedings and based on her complaint, a case was registered in Crime No.10 of 2013 on the file of All Women Police Station, Theni, under Sections 406, 494(b), 506(i) IPC r/w. Section 4 of the Dowry Prohibition Act, 1961. A charge sheet was filed in C.C.No.60 of 2013 on the file of Judicial Magistrate No.1, Theni.

4.Continuing further, it is the version of the Petitioner that his wife filed a petition seeking the relief of 'Divorce' from the Family Court, Chennai, praying for dissolution of marriage dated 25.03.2010. Also that, she filed M.C.No.20 of 2014 on the file of the learned XXIII Metropolitan Magistrate, Saidapet, Chennai under Sections 16, 18, 19 and 21 of the Protection of Women from Domestic Violence Act, 2005 and an order was passed on 03.09.2014.

5.It comes to be known that as against the order dated 03.09.2014 in M.C.No.20 of 2014 on the file of the learned XXIII Metropolitan Magistrate, Saidapet, Chennai, the Petitioner filed a Criminal Appeal in C.A.No.253 of 2014 on the file of the learned III Additional Sessions Judge, City Civil Court and on 22.12.2014, the Criminal Appeal came to be dismissed whereby and whereunder, the order passed by the trial Court was confirmed.

6.In this connection, it is projected on the side of the Petitioner that during the pendency of the appeal, the Petitioner's wife filed a complaint before the Inspector of Police, Abiramapuram Police Station, to execute the order. The grievance of the Petitioner is that without verifying the veracity of the complaint, the police has committed 'Violation of Human Rights'. Therefore, the Petitioner was perforced to prefer a complaint before the First Respondent/State Human Rights Commission, which was forwarded to the Second Respondent/the Deputy Commissioner of Police, Mylapore, Chennai-600 004, being the superior officer of the erred Police Official.

7.It may not be out of place to make a pertinent mention that the First Respondent/Commission, on 24.02.2015 in SHRC Case No.920 of 2015, had passed an order directing the Second Respondent/the Deputy Commissioner of Police, Mylapore, Chennai-600 004, after calling the complainant to enquire into the matter and take necessary action. The Petitioner is assailing the correctness of the Impugned Order dated 24.02.2015 passed by

the First Respondent/Commission in this Writ Petition.

8. It is to be borne in mind that Section 13 of the Protection of Human Rights Act, 1993, speaks of 'Powers relating to Inquiries' which runs as under:

(1) The Commission shall, while inquiring into complaints under this Act, have all the powers of a Civil Court trying a suit under the Code of Civil Procedure, 1908 (5 of 1908), and in particular in respect of the following matters, namely:-

(a) summoning and enforcing the attendance of witnesses and examining them on oath;

(b) discovery and production of any document;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any Court or office;

(e) issuing commissions for the examination of witnesses or documents;

(f) any other matter which may be prescribed.

(2) The Commission shall have power to require any person, subject to any privilege which may be claimed by that person under any law for the time being in force, to furnish information on such points or matters as, in the opinion of the Commission, may be useful for, or relevant to, the subject matter of the inquiry and any person so required shall be deemed to be legally bound to furnish such information within the meaning of section 176 and section 177 of the Indian Penal Code (45 of 1860).

(3) The Commission or any other officer, not below the rank of a Gazetted Officer, specially authorised in this behalf by the Commission may enter any building or place where the Commission has reason to believe that any document relating to the subject-matter of the inquiry may be found, and may seize any such document or take extracts or copies therefrom subject to the provisions of section 100 of the Code of Criminal Procedure, 1973 (2 of 1974), insofar as it may be applicable.

(4) The Commission shall be deemed to be a civil Court and when any offence as it described in section 175, section 178, section 179, section 180 or section 228 of the Indian Penal Code (45 of 1860) is committed in the view or presence of the Commission, the Commission may, after recording the facts constituting the offence and the statement of the accused as provided for in the Code of Criminal Procedure, 1973 (2 of 1974) forward the case to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case has been forwarded to him under section

346 of the Code of Criminal Procedure, 1973 (2 of 1974).

(5) Every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code, and the Commission shall be deemed to be a civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

[(6)Where the Commission considers it necessary or expedient so to do, it may, by order, transfer any complaint filed or pending before it to the State Commission of the State from which the complaint arises, for disposal in accordance with the provisions of this Act:

Provided that no such complaint shall be transferred unless the same is one respecting which the State Commission has jurisdiction to entertain the same.

(7) Every complaint transferred under sub-section (6) shall be dealt with and disposed of by the State Commission as if it were a complaint initially filed before it.]

9. Section 14 of the Protection of Human Rights Act, 1993, deals with 'Investigation'. As a matter of fact, Section 17 of the Act enjoins 'Inquiry into Complaint'. Besides this, Section 18 speaks of 'Steps during and after Inquiry'.

10. At this stage, this Court aptly points out the decision of the Madhya Pradesh Human Rights Commission V. State of Madhya Pradesh and Others reported in AIR 2003 Madhya Pradesh at Page 17, wherein it is observed and held that 'if the objects and reasons of the statute and the relevant provisions of Law kept in view, it cannot be said that by any stretch of imagination that the Commission cannot canvass the cause of the persons who have lost their eye sight'.

11. As per Section 18(3) of the Act, the Human Rights Commission can recommend grant of immediate interim relief to the victim. This immediate interim relief is not dependant upon the final outcome of the liability of the State or the guilt of the Public Servant on whose conduct the vicarious liability of the State arises nor even the establishment of a claim in a Civil Court of Law for damages.

12. Furthermore, the immediate interim relief does not by any stretch of imagination presuppose the proof of criminal liability of the offender before a Court of Law as a pre-condition for administration of reliefs nor does it fall back upon whether any civil litigation is either pending or prospective in nature. In reality, a 'Welfare State' has an

obligation to grant relief to its citizens in distress especially to those victims of violations of their 'Human Rights' by Public Servant. Furthermore, the Human Rights Commission has got Investigation Team (As per Regulations).

13.The main grievance of the Petitioner is that the First Respondent/Commission instead of utilising the service of officer or agency to obtain a report, had simply forwarded the complaint to the Second Respondent/the Deputy Commissioner of Police, Mylapore, Chennai, to conduct enquiry and take necessary action for redressal of the Petitioner's grievances.

14.The prime stand of the Petitioner is that the action of the First Respondent/Commission in simply forwarding the complaint of the Petitioner to the Second Respondent/the Deputy Commissioner of Police, to conduct enquiry and take necessary action is not in accordance with the purported scheme of the Protection of Human Rights Act, 1993. In this regard, the First Respondent/Commission had committed patent illegality in the eye of Law. Therefore, the impugned order of the First Respondent/Commission in SHRC case No.920 of 2015 dated 24.02.2015, is to be set aside by this Court by allowing the present Writ Petition.

15.In response, the Learned Counsel for the First Respondent/Commission brings it to the notice of this Court that the Deputy Commissioner of Police, Mylapore, Chennai, had given his report in reference No.21/DC/ Myp/SHRC/2015 dated 18.05.2015, inter alia stating that the Petitioner had given a false complaint with a view not to disburse the amount to his wife Kohila as per the order of the Court.

16.On behalf of the Second Respondent/Deputy Commissioner of Police, it is represented before this Court that fearing police action under Sections 31 and 32 of the Protection of Domestic Violence Act, 2015 and to avoid the order passed by the Learned Judicial Magistrate in the maintenance case, the Petitioner had filed a false complaint before the First Respondent/Commission and in short, the allegation made by the Petitioner against the police officials are per se false. Therefore, the writ petition is to be dismissed.

17.Also, the Second Respondent in his report, had stated that the Petitioner had given a defamatory imaginative complaint because of the reason that the police had acted based on the petition of the affected wife Kohila. Ultimately, the Second Respondent/the Deputy Commissioner of Police, through his report dated 18.05.2015, had prayed for rejection of the Petitioner's complaint.

18.This Court heard the Learned Counsel for the Petitioner, Learned Counsel for the First Respondent and Learned Counsel

for Second Respondent and noted their contentions.

19. At the outset, this Court points out that the First Respondent/Commission had violated the ingredients of Section 17 of the Protection of Human Rights Act, 1993, relating to 'Inquiry into complaints' had violated the steps to be taken 'during and after enquiry' as envisaged under Section 18 of the Act.

20. It transpires that the First Respondent/Commission had simpliciter forwarded the complaint of the Petitioner dated 31.01.2015, addressed to the Chairman of the First Respondent/Commission to the Second Respondent/the Deputy Commissioner of Police, Mylapore, Chennai-600 004, by directing the Second Respondent after calling the complainant to enquire into the matter and take necessary action. Suffice it for this Court to point out that mere running of the eye over the impugned order of the First Respondent/Commission dated 24.02.2015 in SHRC Case No. 920 of 2015 unerringly points out that the First Respondent/Commission had not resorted to Chapter IV, Procedure viz., Sections 17 and 18 - 'Inquiry into complaints' and 'Steps during and after enquiry', to be taken by the First Respondent/Commission.

21. Viewed in this perspective, this Court without any haziness comes to an inescapable conclusion that the impugned order of the First Respondent/Commission dated 24.02.2015 bristles with 'legal infirmities' and 'material illegalities' in the eye of law. As such, this Court to prevent abrasion of justice and in order to secure the ends of justice, sets aside the impugned order of the First Respondent dated 24.02.2015 in SHRC case No. 920 of 2015. Consequently, the Writ Petition succeeds.

22. In fine, the Writ Petition is allowed and the impugned order of the First Respondent/Commission dated 24.02.2015 is set aside by this Court for the reasons assigned in this Writ Petition. Further, this Court remits back the entire subject matter of the First Respondent/Commission for fresh consideration of the Petitioner's complaint in SHRC Case No. 920 of 2015, of course, in the manner known to law and in accordance with law. It may not be gainsaid that the First Respondent/Commission shall enquire into the complaint of the Petitioner in SHRC Case No. 920 of 2015 by issuing notice to the Petitioner for his appearance on a particular date and to examine him on oath and also to examine the witnesses on his side and also on the side of the police officials. Liberty is granted to the Petitioner to raise all his legal and factual pleas before the First Respondent/Commission. Also, on the side of the Police officials, opportunity to be provided by the First Respondent/Commission to examine the witnesses and to mark relevant documents as the case may be.

After enquiring into the complaint of the Petitioner, the First Respondent/Commission shall pass reasoned speaking order with qualitative and quantitative details, after providing adequate opportunities to the Petitioner/complainant and the concerned Police Officials, uninfluenced and untrammelled with any observations made by this Court in this writ petition, within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar (CS-V)

True Copy

Sub-Assistant Registrar

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To

1. The Registrar
State Human Rights Commission
'Thiruvaramam'
No 143, P.S. Kumarasamy Raja Salai
(Greenways Road), Chennai 28.
2. The Deputy Commissioner of Police
Mylapore, Chennai.

+1 CC to Mr.C.K.M. Appaji, Advocate sr 56665
+1 CC to Govt. Pleader sr 56267

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M.P.Nos.1 & 2 of 2015

SP(21/08/2017)

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