

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 26.11.2018

CORAM :
THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.24544 of 2018
and W.M.P.No.28570 of 2018

Dr.G.Santhi

...Petitioner

vs.

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

2.V.Rengasamy

3.V.Ramasamy

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari or any other appropriate writ, order or direction, in the nature of a writ, calling for the entire records, leading to the impugned proceedings of the 1st respondent in SHRC Cases No.8628/2007/C2 upon the complaint of the 3rd respondent dated 10.10.2009 and quash the same.

For Petitioner : Mr.N.Naganathan
For R1 : Mr.K.V.Sajeev Kumar
For R2 & R3 : No appearance

O R D E R

(Order of this Court made by T.S.Sivagnanam,J.)

This writ petition has been filed by the petitioner, who was working as an Assistant Surgeon in the Government Hospital at Sattur. The challenge in this writ petition is to the summons issued by the State Human Rights Commission to the petitioner based on the complaint given by the third respondent alleging that the petitioner while performing autopsy of the complainant's brother late Lakshmanan, did not follow proper procedures. The petitioner has also challenged the complaint given by the third respondent to the Commission and based on which, summons had been sent to the petitioner.

2.The respondents 2 and 3 are the brothers of the late Lakshmanan. The office report states that notice has been served on the respondents 2 and 3 and their names are printed in the cause list, but none appears for the respondents 2 and 3. We have heard Mr.N.Naganathan, learned counsel appearing for the petitioner and Mr.K.V.Sajeev Kumar, learned standing Counsel for the first respondent, State Human Rights Commission.

3.The petitioner has challenged the impugned complaint and the consequential notice issued by the Commission on the ground that it is barred by limitation. In this regard, the learned counsel refers to Section 36(2) of the Protection of Human Rights Act (hereinafter referred to as "the Act") and submits that the autopsy was performed by the petitioner in the Government Hospital on 01.10.2007, whereas, the complaint has been lodged against the petitioner before the Commission on 10.10.2009 and the delay has not been explained and the allegations are vague and therefore the complaint ought not to have been entertained and summons ought not to have been issued by the Commission.

4.We have heard the learned standing counsel for the Commission on the above submissions.

5.Before we consider the correctness of the submissions made on behalf of the petitioner, we may point out that one of us (Justice T.S.Sivagnanam), while sitting in the Madurai Bench of Madras High Court had dealt with the complaint lodged by the second respondent herein against one Mr.Devaraj, who has worked as Deputy Superintendent of Police, Srivilliputhoor, Virudhunagar District pertaining to the same incident and based on such complaint, the Commission had directed him to appear for an enquiry and these proceedings were put to challenge before the Division Bench in W.P(MD).No.11900 of 2009. The Court after taking into consideration the nature of the complaint pointed out that the only allegation in the complaint is that no arrest has been made by the Police for more than a month and this is because of political influence. The petitioner as Deputy Superintendent of Police has given an explanation as to what steps has been taken pursuant to the registration of the case. However, the Court thought fit not to go into the sufficiency of the explanation offered as it was fully satisfied that there was no specific allegation against the petitioner therein that he had exceeded in exercise of his official power or in any manner acted in violation of human rights. Furthermore, it was pointed out that the Commission without embarking upon the independent enquiry through its agency had mechanically issued summons to the petitioner and for such reasons, the writ petition was allowed and the proceedings were quashed.

6.The said decision would equally apply to the case of the petitioner herein. In fact, the case of the petitioner is far better in the sense that there is absolutely no allegation of any violation of human rights in the complaint dated 10.10.2009. Taking the allegations in the complaint as it is and reading the same would clearly establish that the complainant has not pointed out any violation of human rights, more particularly, to fall within the definition of Human Rights as defined under Section 2(d) of the Act. Furthermore, the delay in the instant case is also fatal because no explanation has been offered by the complainant as to why for more than two years, he had not raised any grievance against the petitioner/Doctor. Further, the complaint does not point out any violation committed by the petitioner in discharge of her official duties. However, the admitted position is that the petitioner had only conducted autopsy and the report has been made available. Thus, in the absence of any specific allegation against the petitioner for allegedly having violated any of the human rights, the Commission without undertaking proper exercise ought not to have issued summons to the petitioner. Thus, we are fully satisfied that the complaint deserves to be rejected at the very threshold and consequently, the summons issued by the Commission is held to be bad in law.

7.Further, in the complaint, one of the allegation is that the Doctor had not noted the external injuries properly. We have perused the statement recorded by the Doctor under Section 161 Cr.P.C and also the deposition of the Doctor before the Human Rights Commission and we find that the injuries have been noted and the evidence is cogent. Further we note that the complaint has been given by the third respondent only on 10.10.2009, i.e., after the petitioner had deposed as PW4 on 20.08.2009 and curiously enough, the complainant against the Deputy Superintendent of Police is the second respondent and the complainant against petitioner is the third respondent, both being brothers. Hence the complaint is quashed and consequently, the summons issued in this petition is held to be bad in law. Accordingly, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

cse

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

To

The State Human Rights Commission,
Tamil Nadu, represented by its Member,
No.143, P.S.Kumarasamy Raja Salai,
(Greenways Road), Chennai - 600 028.

+4cc to Mr.N.Naganathan, Advocate, S.R.No.80641, 80333
+1cc to Mr.K.V.Sajeev Kumar, Advocate, S.R.No.80350

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and W.M.P.No.28570 of 2018

KAN(CO)
KAK(18/12/2018)



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