

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	DELIVERED ON
03-12-2018	111218

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Writ Petition No.28275 of 2018
and W.M.P.No.32972 of 2018

1. Thiru. Prakash
Inspector of Police
Kolathur Police Station
Kolathur, Chennai 600099
 2. Thiru. Vijayakumar
Inspector of Police,
Thammampatti Police Station,
Gangavalli, Salem District.
 3. Thiru.R. Subramani. : Petitioners
- Vs.
1. The State of Tamil Nadu
Rep.by the Secretary to Government
Fort St. George,
Chennai 600009.
 2. The State Human Rights Commission
Rep.by its Secretary,
No.143, PSV Kumarasamy Salai,
Raja Annamalaipuram,
Chennai-600 028
 3. Mrs.J. Meenambal : Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records relating to the orders in SHRC No.9566 of 2007 of the orders passed by the Member of the State Human Rights Commission dated 09.04.2018 and quash the same.

For Petitioners : Mr. M. Gnanasekar

For Respondents : Ms.A.Sri Jayanthi,
Spl.Govt. Pleader for R1

Mr.K.V.Sajeev Kumar for R2

ORDER

[Order of the Court was delivered by N. SATHISH KUMAR, J.,]

The Writ Petition has been filed challenging the Order dated 09.04.2018 passed by the Member, State Human Rights Commission, Tamil Nadu, in SHRC No.9566 of 2007, in which following recommendations have been made:

"a. The Government of Tamilnadu shall make a payment of Rs.2,00,000/- (Rupees Two lakhs only) to the legal heirs of the Complainant Thiru.T.Janakiraman, Son of Thangavelu, No.12,M Block, Pensioners Lane, New Farhans Road, Chennai 600 012, within eight weeks from the date of receipt of this order towards compensation for violation of human rights of the complainant Thiru.T. Janakiraman committed by the respondents.

b. After making such payment, the Government of Tamil Nadu, may recover a sum of Rs.75,000/- (Rupees Seventy Five thousand only) from the 1st Respondent Thiru Murugesan, the then Inspector of Police, P.2, Otteri Police Sttion, Chennai Police on 14.04.2007, may recover a sum of Rs.50,000/- (Rupees Fifty thousand only) from the 2nd respondent, Thiru Prakash, the then Inspector of Police (Crime) P.2, Otteri Police, in February 2008, and a sum of Rs.40,000/- (Rupees forty thousand only) from Thiru K. Vijayakumar, Sub-Inspector of Police, P.2, Otteri Police Station, Chennai Police, on 17.05.2007 and a sum of Rs.35,000/- (Rupees thirty five thousand only) from Thiru. Subramani, Sub-Inspector of Police, (Crime), P.2, Otteri Police Station, Chennai Police, on 17.05.2007 and

c. The Government of Tamil Nadu, may also initiate departmental action against the respondent Thiru Murugesan, the then Inspector of Police, P.2, Otteri Police Station, Chennai Police

on 14.04.2007, Thiru Prakash, the then Inspector of Police (Crime) P.2 Otteri Police Station, Chennai Police, in the month of February 2008, Thiru K. Vijayakumar, Sub-Inspector of Police, P.2 Otteri Police Station, Chennai on 17.05.2007 and Thiru. Subramani, Sub-Inspector of Police (Crime) P.2, Otteri Police Station on 17.05.2007 for their lapses."

2 The brief facts leading to file this Writ Petition is as follows:

2(a) The Petitioners are working in the Police Department in various capacities. The Commission took cognizance of the complaint of one Mr.T. Janakiraman dated 03.12.2007 on 05.12.2007. The crux of the allegation in the above complaint is as follows:

2(a)(i) The complainant is the resident of Pensioners Lane, New Farhans Road, Otteri, Chennai 600012. He is residing with his family in the above address. On 14.04.2007 one Mr. Mahesh who is neighbour of the complainant in a drunken state quarreled with his son-in-law Mr. Kumar, thereafter fell down, which resulted in his death. On the said night the Respondents working in the Otteri Police Station were forcibly removed the complainant and his mother-in-law from their dwelling house by locking the same and made him to live at his relative's house at Vyasarpadi. It is further alleged that despite his repeated request to hand over the keys, the Respondents refused to give the same and stated that the keys will be given only after the murder case was over, which was registered against his son-in-law. The Complainant also learnt that police had entered his house twice. When he enquired the same with the police, they said that since there was leakage in the cooking gas, they opened the house and checked.

2(a)(ii) Thereafter, on the continuous request of the Complainant the house was opened in the presence of Respondents 1, 3 and 4 on 17.05.2007. On entering the house, he found three bureaus were broke opened and the other household articles were also broken and strewn. When the Complainant questioned about this with the Respondents, they threatened him. Thereafter he was taken to the Police Station and asked to give list of stolen articles. After lodging the complainant, he had visited the police station often without any result. Because of the theft he could not arrange for marriage of his daughters. Hence, he sought action against the respondent for their violation of human rights.

2.(b) The Respondents have filed their counters independently.

2(b)(i) It is the contention of the First Respondent that on 14.04.2007, when he was working as Inespector of Police in P-2, Otteri Police Station, based on the complaint of one Tmt.Parvathi wife of the deceased, a case in Cr.No.256 of 2007 was registered under Section 304 I.P.C.against the son-in-law of the Complainant and it is contention of the First Respondent that this complainant has given false theft complaint against the wife son and sons of the deceased in order to criminally intimidate them as they are the eye witnesses to the killing of the said Mr.Mahesh. It is the further contention of the First Respondent that the Complainant himself had opened his house in the presence of the Third and Fourth Respondents and took away the cash and jewellery from the bureau. It is the further contention of the First Respondent that only to avoid retaliation by the family members of the deceased at the request of the complainant, he and his mother in law were transported to stay in another place. The keys of the house was left with neighbour one Ms.Malarkodi. Hence submitted that the alleged death is nothing but false theory.

2(b)(ii) The Second Respondent denied the entire allegations in the complaint and submitted that he joined the concerned police station only in the month of February 2008. On his enquiry he came to know that the allegation of the theft was false and the same is pressed into service only in order the save his son-in-law from the criminal case.

2(b)(iii) The Third Respondent submitted in his counter since there was an apprehension that some untoward incidents are likely to happen due to the murder of Mr.Mahesh they provided police bundobast in that area. After 30 days when the family members of the complainant were visiting the place, as per the instruction of First Respondent in order to give protection he also went to that place. The complainant opened the house after obtaining keys from one Ms. Malarkodi who was residing opposite house. On entry into the house, he complained and shouted that since the glasses of the window in the kitchen situated in the rear side of the house had been broken and he suspected that the cash and jewellery could have been stolen. Thereafter Fourth Respondent was arrived there and the complainant was asked to give the list of stolen articles. However, the complainant opened the bureau and found that nothing was stolen. Hence, the Third Respondent disputed the alleged theft.

2(b)(iv) The Fourth Respondent also denied the allegation in the complaint and submitted that on 14.4.2007 he was not present in the complainant's house, as he left from Chennai

Central to Calicut on 13.4.2007 itself, for investigation in another case. However, on 17.5.2007 he visited the house of the complainant. The complainant after verifying the bureaus and wooden boxes stated that nothing was stolen. Hence, prayed for dismissal of the complaint.

3. The complainant was enquired by the Commission. On the side of the Complainant P.W.1 to P.W.3 were examined and Ex.P.1 to Ex.P.5 marked. On the side of the Respondent R.W.1 to R.W.5 were examined. Based on the exhibits and evidence of witnesses, the State Human Rights Commission passed an order holding that there was a violation of human rights and made recommendations as referred above. Aggrieved over the above findings, the present Writ Petition has been filed.

4(a) The learned counsel appearing for the Writ Petitioner vehemently contended that the entire allegations found in the complaint is highly motivated the same has been pressed into service, only in order to wreck the vengeance against the Police officers who have investigated the murder case of the son-in-law of the complainant. Admittedly, the son-in-law of the complainant was arrested for causing death of one Mr.Kumar neighbour of the complainant on 14.04.2007, in P.2 Otteri P.S.Cr.No.256 of 2007. The present complaint which was the subject matter of impugned order was lodged only on 3.12.2007 with inordinate delay. The delay in lodging complaint with false allegation itself clearly indicate that the entire complaint is motivated. The evidence of P.W.1 to P.W.3 was not appreciated properly by the Commission. The Commission would not have come to such a conclusion. In fact, the evidence of P.W.1 itself clearly indicate that on the date of death of Mr.Kumar his house was ransacked by the relatives of the deceased. Therefore, the complainant and his family members were taken to their relative's house for safety by the respondents which is quite normal. That cannot be a ground to hold that they removed forcibly and committed human rights violation.

4(b) It is the further contention of the learned counsel for the petitioners that there is no scrap of paper available on record to show that there was a theft in the house of the complainant. There is no proof to show that the list of alleged jewels stolen was given to any authority. Therefore, merely on the basis of the bald allegation, the Commission should not have passed an order indicting the police officers who had done their duty legally in investigating the murder case against the son-in-law of the complainant.

4(c) It is the further contention of the learned counsel for the Petitioners that the First Writ Petitioner was in fact

joined the concerned police station only in the month of February 2008, which was not taken note by the Commission. Similarly, the Third Writ Petitioner has in fact was not available on 14.4.2007 sine he has already been deputed to some other case for investigation. These facts were not taken into consideration by the Commission.

4(d) Learned Member of the Human Right Commission has not at all considered the evidence of R.W.1 to R.W.5. They simply carried away by the evidence of P.W.1 which is highly contradictory and attached with motive and bias. Hence submitted that the entire findings not based on any legal evidence. Absolutely, there is no ground even to presume that there is violation of human rights. Even assuming that the alleged theft is proved it is not the evidence of P.W.1 to P.W.3 that only the Respondents were committed the theft. In the absence of any evidence implicating the respondents arriving at a conclusion about the human violation against the respondent is without any basis.

4(e) It is the further contention of the learned counsel that the Commissioner has passed the order in the year 2008 i.e., almost 11 years and no opportunity was given to the Respondents. They have not even given any opportunity to putforth their oral submissions. Though oral evidence was completed in the year 2010, thereafter no opportunity was given to them to putforth their submissions. On that ground also the findings of the Commission cannot be sustained.

5. It is the contention of the learned counsel appearing for the Second Respondent that there is a delay of eight years in passing the order after recording evidence. The Human Right Commission has considered the entire evidence and arrived at a finding and found that the respondents have violated human rights of the petitioner. Hence submitted that the violations are serious in nature the respondents were removed from the house. Therefore, the finding cannot be set aside.

6. We have perused the entire materials and heard both sides.

7. A challenge was made to the findings of the State Human Rights Commission dated 9.4.2018 in SHRC No.9677/200. The Commission took cognizance of the complaint of one Janakiraman, who is admittedly no more now. His wife has made as third respondent in the writ petition. The main allegation found in the complaint dated 3.12.2007 given by Mr.Janakiraman is that on 14.04.2007 his neighbour one Mr. Mahesh in an intoxicated state developed quarrel with his son-in-law. Thereafter he fell down and died. On the same day the Respondents 1 to 4 were forcibly

removed the Complainant and his mother-in-law from the dwelling house, locked their house and made them to stay in their relative's house at Vyasarpadi. It is further alleged in the complaint despite several requests made by the complainant, to handover the keys of the house, the respondents had not handed over the keys. On 17.5.2007 when he went to the house, the Respondents 1,3,4 also came there, at that time he found that the window glasses in the rear side were broken and bureaus were broken and cash and jewels were stolen. It is also allegation of the complainant that he also learnt that one or two occasions the Respondents themselves entered into the house. When he enquired them they have also admitted in visiting the house to check whether any gas was leaking in the house. From the complaint dated 3.12.2007 the sum and substance of the allegations made against the respondents is that they forcibly removed the complainant on 14.4.2007 and kept the keys with them. Thereafter, when they visited the house on 17.05.2007 the complainant found that jewels and cash were missing in the house. Therefore there was a violation of the human rights on the part of the respondents. It is curious to note that though the alleged occurrence took place on 14.04.2007 for the alleged human rights violation, the complaint was lodged before the State Human Right Commission only on 3.12.2007. Almost after six months of the alleged occurrence, there was no explanation whatsoever on the part of the complainant for such huge delay in preferring the complaint. This delay coupled with the suppression of the fact in the complaint about the criminal case registered against his own son-in-law for causing death of one Mr.Magesh created serious doubt about the entire complaint. On perusal of the materials, it is not in dispute that the son-in-law of the complainant one Mr.Kumar who was residing in the same house was charged for the offence under Section 304 I.P.C.for causing death of one Mr.Magesh who was neighbour of the complainant.

8. The materials placed before us also clearly indicate that the said Mr.Kumar (son-in-law of the complainant) was arrested for the offence under Section 304 I.P.C in Cr.No.256 of 2007. This fact has been suppressed by the complainant, whereas the complainant proceeded as if no such incident ever happened on the date of occurrence i.e., on 14.04.2007. He also proceeded to canvas his case as if no such things happened and said Mr.Magesh died of fall. Such suppression coupled with the delay in preferring complaint makes the allegation in the complaint doubtful. It is the case of the respondent that since the neighbour was murdered there was apprehension as to the retaliation may be from the deceased family. When the above stand of the respondent are considered in the light of the evidence of P.W.1 himself, we have no hesitation in coming to the conclusion that the allegation of the complaint that the

respondents have forcibly removed the complainant from his dwelling house is nothing but false one and created at a later point of time with ulterior motive.

9. P.W.1 in the Chief Examination has stated as if the police vacated their house and took them to police station and left them in their relative's house at Vyasarpadi. In the cross examination, P.W.1 has categorically admitted that at the time of occurrence his house was ransacked by the members of the deceased family. Thereafter, police reached and took the complainant and his family for safety and left them at Vyasarpadi. Thereafter they stayed in Vyasarpadi for a month. It is his own admission that the complainant house was ransacked on the date of occurrence i.e., on the date of causing death of one Mr.Magesh by the son-in-law of the complainant. Even assuming that instead of giving protection, the respondents took complainant and his family several places and left them to stay in their relative's house, in our considered view, the same cannot be a ground to hold that there was a violation of human rights and the respondents have forcibly removed the complainant and family members from their house. It is to be noted that admittedly Mr.Magesh was allegedly murdered by the son-in-law of the complainant, the house of the P.W.1 was ransacked by the family members of the deceased. Therefore, in order to safe guard the family members of the complainant from the family members of deceased Mr.Magesh they removed them. The same cannot be construed as violation of human right. Therefore the Commission's observation that the police ought to have given proper bundobast instead of removing them has no leg to stand. When the retaliation expected from deceased family members, one cannot expect 24 hours vigil. Therefore, merely because P.W.1 and P.W.2 went to the safer places from being attacked by the deceased family members, it cannot be concluded that the police committed violations of human rights.

10. It is the further allegation of the complainant that the police kept the keys with them and thereafter for the first time on 17.05.2007 Respondents 1,3 and 4 opened the house and the complainant found that window glasses of the rear side have been broken; bureaus also broken and there was a theft of jewels and cash. Though P.W.2 and P.W.3 were examined, their evidence will not prove any violation of human rights nor theft of articles. The evidence of P.W.2 and P.W.3 when carefully seen it appears to be only hearsay evidence with regard to the alleged theft and nothing else. Therefore, the alleged theft by the police viz., Respondents 1 to 4 cannot be inferred merely on the basis of the delayed complaint which also suppressed the real occurrence which took place on 14.04.2017.

11. It is further to be noted that even assuming to be true

that the Respondent 1 to 4 have accompanied by the complainant on 17.05.2007, at that time the complainant found jewels and cash were missing. Such incident alone cannot be a ground to presume that the Respondents 1 to 4 committed theft of jewels and cash from the house of complainant. The allegations of the complainant that he learnt prior to the visit of the house on 17.05.2007 the police had already visited the house twice. To substantiate the above allegations no materials available on record. Therefore, merely on surmise and inference, the respondents cannot be indicted for the alleged theft of jewels and cash. It is the evidence of the P.W.1 that on 14.04.2007 itself his house was ransacked and windows were broken. They left the house on the same day. That being the position, the police broke open the house and committed the alleged theft is highly improbable. Such conclusion arrived by the State Human Rights Commissioner is not based on evidence, but merely on surmise and inference. The entire evidence of P.W.1 to P.W.3 and R.W.1 to R.W.5 when carefully seen same indicate the police accompanied the complainant on 17.05.2007, immediately after the complainant made allegation of the theft, the police asked him to give particulars about the missing jewels and cash. However, no such details given by the complainant.

12. It is further to be noted that the evidence of the respondent also clearly indicate that they have also found that no theft has taken place as alleged by the complainant. P.W.3 one of the independent witnesses, who accompanied P.W.1 to the house on 17.05.2007 has also stated that no jewels was stolen. This also not considered by the Human Rights Commission. It is further to be noted that the conduct of the complainant assumes significance. Knowing very well that his house was ransacked on the same night on 14.04.2007 when the death of one Mr.Magesh took place, the complainant suppressed the factum of arrest of his son-in-law in the above crime. That apart, despite serious allegation about the theft against the police officers, no complaint whatever given to superior officers. Even in the present complaint, no details have been given as to the nature of the jewels and cash stolen from the house. All these facts created serious doubt about the entire version. It is normal human conduct of anyone atleast to make a complaint as to the missing of jewels and the details about the jewels, which has not been done by the complainant. No materials filed to show that he lodged the complaint with the higher officials in this regard. Therefore, these facts cannot be ignored altogether.

13. The learned Member of the Commission has given undue importance to the contrary stand taken by the respondent in their counter. Merely because some inconsistency found in the counter filed by the respondents, that cannot be a ground to presume the alleged violation of human rights. Here is the

case, the complainant has specifically alleged that he was forcibly removed from his house on 14.04.2007, which itself found to be false. Second main allegation is that the respondents have committed a theft of jewels. When there is a serious allegation of theft, there must be at least some probabilities or preponderance in favour of the complainant. When serious violation of human rights are alleged against the police officers, there must be some reasonable materials on record before implicating the officials. On the face of the allegation in the complaint itself indicates that there is undue delay in lodging the complaint with suppression of material facts, the State Human Rights Commission ought not to have given much importance to the minor inconsistencies in the counter filed by the respondents. It is for the complainant to establish his case before the Commission. On perusal of the entire materials particularly the evidence and also assessing the conduct of the complainant, we are of the view that the State Human Rights Commission has not appreciated the facts, evidence and materials properly.

14. It is also curious to note that the evidence of the parties were recorded in the year 2010 by some other officer, thereafter, 2018 finding has been rendered by another officer of State Human Rights Commission even without giving an opportunity for arguments. The officer who have rendered finding did not have an opportunity to see the demeanour of the witnesses. That being a position he ought to have given an opportunity to the parties to put forth their arguments which has not been done so in this case. That also one of the reasons, the order cannot be sustained in the eye of law. Further, the specific case of the respondents 1 and 3 that they were not present. The First respondent assumed charge in the concerned police station in the year 2008 and the Third Respondent was not present in the house of complainant as he was deputed some other investigation on 13.04.2007 itself is not at all considered by the commission.

15. The Commission in fact is a fact finding body, which has all the trappings of civil Courts, and in particular summoning and enforcing the attendance of witnesses, discovery and production of any document, receiving evidence on affidavits and requisitioning any public record or copy thereof from any court or from any other office while enquiring into the complaints under the Act. But despite the specific stand taken by the respondent that on the the date of occurrence one of the respondents has not joined in the concerned police station, the Commission has not even to care to summon the documents to verify the above fact from the concerned office. Similarly, the Commission has not taken any steps even to verify whether the third respondent was present in the occurrence place or he was

deputed to some other duty at the relevant point of time. Without exercising any of the power to ascertain the facts correctly, implicating the respondents for violations of the human rights, in our view, is not proper appreciation of facts as well as law. Therefore, such finding cannot be sustained in the eye of law. Therefore, we are constrained to interfere with the findings rendered by the State Human Right Commission in SHRC No. 9566 of 2007 dated 9.4.2018 and the same is set aside. The Writ Petition is allowed. No costs. Consequently connected M.P.is closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

ggs

To

1. The Secretary to Government,
Government of Tamil Nadu
Fort St. George, Chennai 600009.

2.The Secretary
State Human Rights Commission
No.143, PSV Kumarasamy Salai
Raja Annamalaipuram
Chennai 600028.

+3cc to Mr.M.Gnanasekar, Advocate, S.R.No.85519 & 86303

+1cc to Mr.K.V.Sajeev Kumar , Advocate, S.R.No.85164

+1cc to the Government Pleader, S.R.No.86225

सत्यमेव जयते

W.P.No.28275 of 2018

NRI (CO)

CS/10/01/2019

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