

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	DELIVERED ON
10/12/18	12/12/18

CORAM:

THE HONOURABLE MR. JUSTICE T.S. SIVAGNANAM
AND

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR
Writ Petition No.32515 of 2018

S. Shanthi

: Petitioner

Vs.

1. State Human Rights Commission,
Tamil Nadu
Rep.by its Member
No.143, P.S.Kumarasamy Raja Salai,
Greenways Road,
Chennai 600028.

2. Mr.Yoganathan,
Head Constable, SBCID,
Vandavasi North P.S.
Thiruvannamalai District.

3. Mr. Chandrasekaran
Inspector of Police,
Vandavasi South Police Station,
Tiruvannamalai District.

4. Mr. Jayaraman
Special Sub Inspector of Police,
Vandavasi South Police Station,
Tiruvannamalai District.

5. Mr. Mahendran
Deputy Superintendent of Police,
Vandavasi,
Tiruvannamalai District.

: Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari Mandamum to call for the records of the first respondent relating to the order dated 19.06.2018 in SHRC No.3033 of 2014 and 5872/2014/HC2 to quash the same and thereby punish the respondents 2 to 5 for violation of Human Rights of the petitioner and her family members.

For Petitioner

: Mr.K. Srinivasamurthy for
Mr.J. Muthukumaran

ORDER

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

Aggrieved over the findings of the State Human Rights Commission by its Order dated 19.06.2008 dismissing the complaint of the Writ Petitioner, the present Writ Petition has been filed challenging the above findings.

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

2(a) The husband of the Writ Petitioner one Mr. Selvamurthy and the Second Respondent Mr. Yoganathan born to one Mr. Govindaraj. It is the case of the Writ Petitioner that the Second Respondent born to concubine of said Mr. Govindaraj. Whereas her husband is legal heir born to the First Wife. Her husband's grandfather one Mr. Krishna Gounder had ancestral properties of four Acres. Besides he also purchased some other lands from the income of the ancestral properties. Whereas the Second Respondent is working as Head Constable, with the help of his father tried to grab the land with support of his brother Mr. Arumugam. Therefore, the husband of the Writ Petitioner filed a suit on the file of Principal District Munsif, Vandavasi in O.S.No.130 of 2012 not to transfer the property to anybody else and not to execute any Will regarding the said property. Despite the filing of the above suit, the said Mr. Govindaraj executed a Will dated 12.06.2013 in favour of the Second Respondent. Therefore, the Writ Petitioner's husband filed another suit in O.S.No.128 of 2013 on the file of the Subordinate Judge, Cheyyar, challenging the Will dated 12.06.2013. The Second Respondent and his father and others trespassed the properties and threatened the writ petitioner and her husband which resulted in filing of criminal complaint in Cr.No.373 of 2013. Thereafter, at the instigation of the Second Respondent a counter case also registered against the complainant in Cr.No.374 of 2013. When the matter stood thus, on 03.05.2014 at about 9.00 p.m. the complainant and the family members were beaten by the Second respondent and his relatives. The complainant went to the police station. However, the police refused to receive the complaint. However, the police asked her daughter to come to the police station on the next day. Besides, they also threatened the complainant to vacate the house. They detained the complainant's husband. Thereafter, the Third Respondent obtained a complaint from Mr. Govindaraj and lodged a false case against them. Her husband was remanded to judicial custody. Hence, there is a violation of human rights. Hence, writ petitioner filed a complaint before the Human Rights Commission.

3. The Respondents filed counter before the Commission in which they have denied the entire allegation submitted that there were two civil suits pending between the parties. The properties were bequeathed in favour of the Second Respondent by his father Mr.Govindaraj and several complaints were filed against each other. The complainant in order to escape from the criminal case filed in Cr.No.184 of 2014 under Section 294, 323, 355, 506(i) I.P.C, filed the complaint before the Commission.

4. It is the case of the respondent that the above police complaint in Cr.No.184 of 2014 was registered against the complainant on the basis of the complaint given by Mr.Govindaraj, who was admitted in the hospital for the injury caused to him by the Writ Petitioner and others. The husband of the Writ Petitioner was produced before the Judicial Magistrate. However, her daughter was released on bail in Police Station itself, since she was studying in the Engineering College. Hence, prayed the Commission to dismiss the complaint.

5. On the side of the complainant P.W.1 to P.W.4 were examined and on the side of the respondent Mr.Govindaraj was examined as R.W.1.

6. The Learned Member of the Human Rights Commission based on the evidence of witnesses, passed an order holding that there was no violation of human rights as alleged by the Writ Petitioner and dismissed the complaint. Aggrieved over the above findings, the present Writ Petition has been filed.

7. The Learned counsel for the Writ Petitioner submitted that the First Respondent admittedly Police Constable working in the Vandavasi Police Station and the other Respondents were also superior officers working in the same police station. In order to help him, they registered false complaint against the husband and daughter of the Writ Petitioner and her husband was arrested. There is a clear case of violation of human rights. Further, the complaint lodged by the Writ Petitioner was also not enquired. Hence, there is a clear case of human rights violation. They have also threatened the others. Hence, submitted that the findings of the Member of the State Human Rights Commission is not based on the proper appreciation of evidence and law and the same is required to be modified and he has also submitted that if the Court is of the view that the matter could be settled, the parties may be directed to Mediation.

8. We have perused the entire materials. The State Human Rights Commission took cognizance of the complaint filed by the Writ Petitioner. The following facts can be

culled out from the entire reading of the complaint which is annexed to the typed set. The main grievance of the Writ Petitioner appears to be that one Mr.Govindaraj, the father of the Second Respondent has bequeathed the entire property except the vacant site, in favour of the Second Respondent which was challenged by the husband of the Writ Petitioner. From the admitted facts it can be seen that one Mr.Selvamurthy P.W.2 the husband of the Writ Petitioner and the Second Respondent were born to one Mr.Govindaraj, of course, with different mother. Mr.Selvamurthy is born through first wife of Mr.Govindaraj, whereas the Second Respondent born to said Mr.Govindaraj through his second wife Mrs.Alamelu. However, it is the contention of the Writ Petitioner that the Second Respondent was born to the concubine of Mr.Govindaraj viz., Tmt.Alamelu.

9. The Writ Petitioner's main grievance appears to be that the father of the Second Respondent and also his father i.e., Mr.Govindaraj taken a side to the Second Respondent and tried to transfer his properties in favour of the Second Respondent. It also appears from the admissions made by the Writ Petitioner that her husband has filed a suit in O.S.No.130 of 2013 on the file of the District Munsif, Vandavavasi, restraining Mr.Govindaraj from executing any Will. However, no interim orders has been passed in the said suit. Thereafter, it appears that the said Mr.Govindaraj executed a Will dated 12.06.2013 in favour of the Second Respondent bequeathing substantial portion of his properties and deposited the above Will before the Sub-Registrar, Vandavasi. Thereafter, the suit filed by the Writ Petitioner's husband was dismissed as withdrawn. After that, he appears to have filed another suit in O.S.No.128 of 2014, challenging the Will dated 12.06.2013, which appears to be pending. In the meanwhile, there were a case and counter case registered against both sides in the year 2013 in Cr.No.373 and 374 in Vandavasi Police Station. These facts are admitted in the very complaint itself. The main violation alleged by the Writ Petitioner is that on 03.05.2014 the Second Respondent and his father attacked them. Thereafter, they went to the police station. Their complaint has not been registered. On the contrary, her husband and daughter were booked in Cr.No.184 of 2014 and her husband was remanded to judicial custody and the daughter was given bail in the police station.

10. It is the contention of the Respondents, that the Cr.No.184 of 2014 was registered on the basis of the complaint lodged by Mr.Govindaraj who have got admitted in the hospital for the injuries suffered by him, in view of the violence unleashed by the Writ Petitioner and family. Since the daughter of the Writ Petitioner was a student she was released on bail in the police station itself.

11. From the above facts narration, makes it clear that there is a Civil dispute pending between the parties. The main grievance appears to be with regard to the allotment of properties to the Second Respondent by one Mr.Govindaraj, who is the father of the Second Respondent as well as the husband of the husband of the Writ Petitioner. Admittedly, said Mr.Govindaraj has executed a Will, such execution of the Will also challenged in O.S.No.138 of 2013 on the file of the Subordinate Judge, Cheyyar. In the meanwhile there were a case and counter filed by each other in view of the long property dispute. Therefore, at no stretch of imagination, it can be said that the Respondents 2 to 5 have violated any human rights merely on the basis of FIR has been filed against the Writ Petitioner, husband and daughter on the basis of the complaint by the injured viz., one Mr.Govindaraj who has examined as R.W.1 before the Commission.

12. It is to be noted that the First Respondent being the Police Constable, we cannot presume that other police officers have registered false case against the Writ Petitioner particularly, serious dispute have already been pending between the parties. In the year 2013 also, case and counter case have been registered on both sides. The police has to register a complaint when the cognizable offence is made out. It is the specific stand of the Respondents in the counter that Mr.Govindaraj was admitted in the hospital thereafter they have registered the complaint in Cr.No.184 of 2014. Once cognizable offence is made out, it is the duty of the Station House Officer to register a FIR and conduct the investigation. Therefore, merely because the Second Respondent was working in the same police station, motive cannot be attributed against other police officers for violation of human rights. Law, in fact mandates the registration of FIR mandatory when the cognizable offence is made out. Admittedly, R.W.1 was examined; he has also deposed before the Commission how the Writ Petitioner and family indulging in violence to get the property. The Learned Member of the Commission considered the entire aspects and found that absolutely there is no material to find any human rights violation. Therefore, we are of the view that when the dispute primarily in respect of the property and share among the family members, merely because one of the family members was working as police constable, we cannot presume that any complaint registered on the basis of law and order problem or violence against the family members such registration of FIR cannot be construed as false case at all. We cannot come to such conclusion pending trial of the above case. Hence, we do not find any materials to hold that there is a violation of human rights by the Respondents.

13. The entire gamut of dispute is arising out of the family properties. If any member of the family aggrieved over the decision of the elder member of the family, has to seek remedy to establish his/her right in the property before the appropriate forum. Admittedly, the suit has also filed questioning the Will executed by the father of the Second Respondent which is pending in O.S.No.128 of 2013 on the file of the Sub-Judge, Cheyyar. The Writ Petitioner or her husband has to establish their rights only in the above suit. They cannot resort to the complaint before the Human Rights Commission to achieve indirectly what they cannot do directly. Admittedly, they are also facing criminal prosecution. They cannot resort to the proceedings before the Human Rights Commission for the alleged violations of human rights to avoid criminal prosecution and also settle their scores. Hence, we do not find any materials to admit the Writ Petition. The State Human Rights Commission has considered the entire aspect factually and dismissed the complaint of the Writ Petitioner.

14. In view of the above, the Writ Petition is dismissed in the admission stage. It is for the Writ Petitioner or her husband to work out their remedy for property rights in appropriate forum. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

The Registrar
State Human Rights Commission,
Tamil Nadu
No.143, P.S.Kumarasamy Raja Salai,
Greenways Road,
Chennai 600028.

+1cc to Mr.J. Muthukumaran , Advocate SR.No. 86349

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ASK(02/01/2019)