

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :26.08.2019
CORAM

The Honourable Mr.JUSTICE K.K.SASIDHARAN

and

The Honourable Ms.JUSTICE P.T.ASHA
W.P.No.18687 of 2019

V. Nagarathinam

Petitioner

Vs.

1. The Registrar,
State Human Rights Commission,
Tamil Nadu,
143-P.S.Kumarasamy Raja Salai,
Greenways Road,
Chennai- 600 028.

2. Mr. Ponchollai,
The Inspector of Police,
Thirupathur Town Police Station,
Thirupathur.

3. Mr. Subramani, (HC- 1398)
Head Constable,
Thirupathur Town Police Station,
Thirupathur.

4. Mr. Kumar, (HC-3236)
Head Constable,
Thirupathur Town Police Station,
Thirupathur.

5. Mr. Tamilalagan, (PC-805)
Driver,
Thirupathur Town Police Station,
Thirupathur.

6. Mr. Ganesh Kumar,
The Inspector of Police,
Sipcot Police Station,
Tuticorin

.. Respondents

Prayer: Writ Petitioner is filed under section Article 226 of the Constitution of India praying to issue a writ, order, or direction more specifically in the nature of Writ of Certiorarified mandamus calling for the records in case Nos.9409 of 2018/C.P. on the file of the first respondent dated 08.03.2019 and quash the same and consequently direct the first respondent to take the petitioner complaint on file and pass such further order.

For Petitioner : Mr. B. Gopalakrishnan
For Respondents : Mr. K.V. Sajeew Kumar for R1
R2 to R6- Not ready

O R D E R

(Order of the Court was delivered by P.T.ASHA, J)

The above writ petition is filed challenging the order passed by the first respondent herein closing the complaint filed by the writ petitioner on the ground that the same is not entertainable as per regulation 9(c) & 9(h) of the State Humans Rights Commission, Tamil Nadu (Procedure) Regulations, 1997 and under Section 36(2) of the Protection of Human Rights Act, 1993.

2. It is the case of the writ petitioner that one of his erstwhile employee Mrs.Mangalakshmi wife of Saravanan had some misunderstanding with her husband who was an alcoholic. At the request of her grandmother, on 23.04.2008, the writ petitioner had agreed to accommodate the said Mangalakshmi and her two children in his house. He had agreed to this arrangement since he was constantly away from Bommidi on business and therefore his house was vacant.

3. It appears that the said Mangalakshmi had left her matrimonial home on 24.04.2008 and on 25.04.2008 her husband lodged a complaint of wife and children missing with the second respondent who was the Inspector of Police, Thirupathur Town Police Station. The case was also registered in Crime No.436 of 2008 on 28.04.2008.

4. The writ petitioner would contend that on 29.04.2008, he had collected a sum of Rs.65,000/- from his customers and had also borrowed a sum of Rs.1,00,000/- from one Perumal Gounder to purchase materials for his business and after returning home to Bommidi he had kept the entire amount in his house and on the very same day he had left for Thirupathur on urgent business.

5. While the petitioner was away from Bommidi, he received a telephone call on 05.05.2008 at around 11 p.m. from his

landlord informing that the second respondent had come to his house and taken away the said Mangalakshmi and her children to the police station in connection with the complaint that was lodged by her husband Saravanan. On hearing the news, he had immediately contacted the grandmother of the said Mangalakshmi and informed her about the same. In the earlier hours of 06.05.2008, the petitioner once again received a call from his landlord who informed him that the second respondent and respondents 3 and 4 who are Head Constables and the 5th respondent who is the Police Driver had come to his house and taken away all his belongings including valuables and the cash. The said articles had been removed using the Police Jeep as well as a Mini Auto. The second respondent had informed the landlord that the petitioner should meet him as soon as he returns.

6. On 07.05.2008, the petitioner had returned and he had immediately gone to the Thirupathur Police Station. When the petitioner had requested for return of his articles and cash, he was chased away by the respondents 3 to 6 herein. Therefore the petitioner had lodged a complaint with the Bommidi Police Station on 12.05.2008. The Inspector of Bommidi Police Station directed the petitioner to go to Thirupathur Police Station and lodge a complaint. Therefore he had sent a complaint to the Director General of Police, Chennai and the Superintendent of Police, Vellore and other officials on 22.05.2008 narrating the sequence of events and requested them to initiate action against the respondent and the same was not complied with. However the second respondent had directed the petitioner to appear before him for an enquiry on the complaint that he had lodged.

7. The writ petitioner had filed W.P.No.13361 of 2009 for a mandamus directing the Superintendent of Police to take action against respondents 2 to 5. When the matter came up for hearing, a report was filed that the said Mangalakshmi had made a complaint that she had been kidnapped by the petitioner and forcibly made to stay in his house. Since the complaint was already registered against the petitioner, this Court by order dated 05.03.2010 was pleased to dispose of the Writ Petition observing that the only remedy which is available to the petitioner is to approach the concerned Jurisdictional Magistrate. Meanwhile the petitioner came to know that a complaint was lodged against him at the Bommidi Police Station on 17.08.2008. This complaint appears to have been lodged in collusion between the second respondent and the sixth respondent who is the Sub Inspector of Police of Bommidi Police Station. The Bommidi Police also filed a charge sheet against the petitioner and the same was taken on file in C.C.No.54 of 2010 before the Judicial Magistrate, Pappireddypatti. Thereafter the petitioner had moved Anticipatory Bail and the same was also granted to him by order dated 11.10.2012 in CMP.No.2140 of 2012.

8. During the Trial in C.C.No.54 of 2010, the said Mangalakshmi had categorically stated that she had not given any complaint against the writ petitioner and neither had writ petitioner kidnapped her. On the basis of her evidence, the learned Judicial Magistrate was pleased to dismiss CC.No.54 of 2010 by order dated 11.10.2017. As soon as the criminal complaint was dismissed, the writ petitioner had filed the complaint before the first respondent herein who had dismissed the same by order dated 08.03.2019. Aggrieved by the same, the writ petitioner is before this Court.

9. On a perusal of the records, it is clearly evident that though the complaint was lodged in 2008 ultimately the order in the Criminal complaint was passed only in the year 2017 acquitting the writ petitioner honorably and holding that he was in no way involved in the complaint alleged to have been lodged by Mangalakshmi since Mangalakshmi herself had denied that she had ever made such a complaint and she had also clearly stated that the petitioner had not abducted or kidnapped her.

10. In the light of the above, it is not known as to how the first respondent has held that the said complaint is covered by a judicial verdict. In fact the judicial verdict is in respect to the false complaint which has been lodged against the petitioner whereas the petitioner has sought action against respondents 2 to 5 for illegally removing the valuables and money from his house. The complaint is totally independent of the complaint which was the subject matter before the Judicial Magistrate, Pappireddypatti. The reference to the order that the complaint cannot be entertained in view of section 36(2) of the Protection of Human Rights Act, 1993 and Regularizations 9 (c) & 9(h) of the State Human Rights Commission, Tamil Nadu (Procedure) Regulations, 1997 has no bearing to the facts of the case on hand. The writ petitioner had stated that a false complaint had been lodged against him on the basis of which he had suffered lot of harassment in the hands of the respondents. The fact that the complaint filed against the petitioner was false is established by the Judgment in the Criminal complaint which had come to be passed on 11.10.2017. The complaint now filed by the petitioner is well within the jurisdiction of the first respondent. The order of the first respondent is therefore erroneous and is liable to be set aside.

11. In the result, the writ petition is allowed. The impugned order passed by the first respondent dated 08.03.2019 is set aside. The first respondent is directed to take on file the complaint and dispose of the same on merits within a period of eight (8) weeks from the date of receipt of a copy of this order. No costs.

-s/d-

Assistant Registrar(CJ conf)

True Copy

Sub-Assistant Registrar

mrn

To

The Registrar,
State Human Rights Commission,
Tamil Nadu,
143-P.S.Kumarasamy Raja Salai,
Greenways Road,
Chennai- 600 028.

+1 cc to M/s.K.V.Sanjeev kumar Advocate sr72999,
+1 cc to M/s.S.Gunalan Advocate sr72576

W.P.No.18687 of 2019

mr(co)
aa14/10/2019

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