

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03-02-2020

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

Writ Petition No. 1271 of 2020

K.K. Krishnan

... Petitioner

Versus

1. The State Human Rights Commission
rep. by its Member, Tamil Nadu

2. George Miller
Inspector of Police
K-4, Anna Nagar Police Station
Chennai

3. Sundar
Sub-Inspector of Police
K-4, Anna Nagar Police Station
Chennai

... Respondents

Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus by calling for the records in SHRC Case No.1640/2015 on the file of the first respondent and quash the order dated 13.11.2019 therein and direct the first respondent to permit the petitioner to continue the cross-examination of the third respondent in the said case.

For petitioner : Mr. B. Mohan

For respondents: Mr. K.V. Sanjeev Kumar for R1
No representation for RR2 and 3

ORDER

(Order of the Court was made by R. Subbiah,J)

This writ petition is filed by the petitioner questioning the validity and/or correctness of the order dated 13.11.2019 passed by the first respondent/ Commission, whereby the

Commission closed the evidence of RW2 in SHRC Case No.1640 of 2015.

2. The background facts, which are essential for disposal of this writ petitioner, are elucidated in brief hereunder.

3. The Petitioner is a retired Divisional Manager in Tirupura Chits, Anna Nagar, Chennai. According to the petitioner, on 20.02.2015, he accompanied his friend's son by name Riyaz to the K-4 Anna Nagar Police Station in connection with a tenancy dispute complaint lodged by one Sanjay Gupta, who is a tenant in the property owned by the above said Riyaz. During the interrogation in the police station, inspite of explanation offered by the petitioner and the said Riyaz, the second and third respondents threatened the said Riyaz to allow his tenant to continue to occupy the premises notwithstanding the huge rental arrears payable by the tenant. According to the petitioner, the dispute with respect to non-payment of rental arrears is a civil dispute which has to be adjudicated only by the Civil Court, however, the respondents 2 and 3 have, for the reasons best known, supported the tenant, who had committed default in payment of rent. Furthermore, the second and third respondents, at the instance of the tenant Sanjay Gupta, registered a false first information report and arrested the petitioner and few other employees of the said Riyaz and remanded them. Before their arrest, the respondents 2 and 3 brutally assaulted the petitioner and others and also refused proper medical assistance inspite of the fact that the petitioner informed the respondents 2 and 3 that he is a chronic diabetic and having high blood pressure. Aggrieved by the unlawful detention and consequential arrest of the petitioner, after the petitioner was released on bail, the petitioner has given a complaint before the first respondent and it was taken on file as SHRC Case No.1640 of 2015. During the course of the proceedings before the first respondent, the petitioner has examined seven witnesses on his side, including the staff of Riyaz, who was brutally assaulted by the respondents 2 and 3. The petitioner also examined the Doctors who have given treatment to the petitioner before his remand and also during his incarceration. The second respondent was also examined himself as RW1 during the trial. Similarly, the third respondent, who registered the first information report has examined himself as RW2. During the cross examination of RW2 on 13.11.2019, the counsel for the petitioner had put certain questions to RW2 relating to the circumstances that led to the filing of the first information report, investigation done by him etc., but according to the petitioner, the Presiding Officer of the Commission did not permit the counsel for the petitioner to put certain vital questions to RW2 during his cross-examination. Even though the counsel for the petitioner

insisted the Presiding Officer to permit him to continue the cross-examination of RW2, such permission was refused and ultimately on 13.11.2019, the Presiding Officer has closed the further cross-examination of RW2. Aggrieved by the same, the present writ petition is filed.

4. The learned counsel for the petitioner would contend that the basis for the complaint before the first respondent is the manner in which a false first information report was registered by the second and third respondents as also the filing of a charge sheet against the petitioner and others for extraneous consideration. Therefore, on the basis of the pleadings raised in the complaint, the counsel for the petitioner had put relevant questions to RW2 to substantiate the complaint. However, the Presiding Officer of the first respondent had intervened and closed the cross-examination of RW2 and thereby caused grave prejudice to the petitioner. According to the counsel for the petitioner, the cross-examination of RW2 is very important for the petitioner to establish his case. Therefore, if the trial in the complaint proceeds without permitting the counsel for the petitioner to cross-examine the second respondent further and thereby to put certain vital and relevant question to the witness, the petitioner will be highly prejudiced besides he could not establish his own case. It is also stated by the learned counsel for the petitioner that the order passed by the first respondent, closing the further cross-examination of the second respondent, is in violation of principles of natural justice and therefore, he prayed for setting aside the order of the first respondent.

5. The learned counsel appearing for the first respondent, by relying on the counter affidavit of the first respondent/Commission, would contend that the complaint of the petitioner was taken on file on 02.03.2015 and due notice was served on the respondents 2 and 3 herein. On receipt of notice, the respondents 2 and 3 have filed their counter affidavit on 16.07.2015. As per the procedure, the counsel for the petitioner has also filed petition for cross-examination of the second and third respondents herein. On 13.11.2019, when the third respondent was cross-examined, the counsel for the petitioner had put certain questions which were totally irrelevant for a decision in the case and therefore, the Presiding Officer pointed out the same to the counsel for the petitioner and requested to desist from putting such irrelevant questions to the witness. Despite the same, the counsel for the petitioner proceeded to put questions to the third respondent, which are irrelevant for consideration. According to the counsel for the first respondent, the Commission is set up for enquiring into complaints relating to violation of human rights

and the proceedings before the first respondent cannot be conducted like a criminal trial. It is also stated that during the cross-objection of the third respondent, as RW2, as the counsel for the petitioner had put up several irrelevant questions, the Presiding Officer politely requested the counsel for the petitioner to desist from repeating such question. However, the counsel for the petitioner raised his voice against the Member of the Commission to record whatever questions put by him during the conduct of cross-examination. As the counsel for the petitioner conducted himself in a demeaning manner, the Commission had thought it fit to close the cross-examination of RW2. It is also submitted by the counsel for the first respondent that in the interest of justice, the cross-examination can be continued from where it stopped on 13.11.2019. However, the counsel for the petitioner shall be directed to conduct himself in a manner required before the Commission. The learned counsel for the first respondent therefore prayed for passing appropriate orders in this writ petition.

6. We have heard the counsel for both sides and perused the materials placed on record. On perusal of the records, it is evident that the Commission was constrained to discontinue the cross-examination of RW2 by the counsel for the petitioner due to his unacceptable manner in which certain questions were posed to the witness. At the same time, we are of the view that for the blameworthy conduct of the counsel, if any, will not be a ground for the Commission to close the cross-examination of RW2. According to the counsel for the petitioner, the cross-examination of RW2 is very vital for establishing the case of the petitioner before the Commission. Therefore, having regard to the above, we are of the view that the counsel for the petitioner shall be permitted to continue the cross-examination of RW2. At the same time, the counsel for the petitioner shall also conduct the cross-examination of the witness by adhering to the established procedures contemplated under law. The counsel for the petitioner is also directed to complete the cross-examination without causing unnecessary delay, particularly, on a date that may be fixed by the Commission for such a course.

7. With the above direction, the writ petition is disposed of. No costs. Consequently, WMP No. 1529 of 2020 stands closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

The Member,
The State Human Rights Commission,
Tamil Nadu.

+1cc to M/s.K.V.Sajeev Kumar, Advocate Sr.8267
+1cc to M/s.B.Mohan, Advocate Sr.7981

WP No. 1271 of 2020

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