

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.08.2021

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

Crl.O.P.No.9104 of 2018
and
Crl.M.P.Nos.4697 & 4698 of 2018

1. Mr.Munisekar
2. Mr.Prabakaran

.. Petitioners

Vs.

K.Hemarajan

.. Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in P.R.C.No.44 of 2017 now pending committal on the file of the learned V Metropolitan Magistrate, Egmore (Allikulam) Chennai and quash the same.

For Petitioners : Mr.R.Ganesh Kumar

For Respondent : No appearance

ORDER

The petitioners, against whom private complaint has been given by the respondent before the V Metropolitan Magistrate, Egmore, Chennai, implicating themselves and other person for an offence u/s 12 of the

Protection of Human Rights Act r/w Section 200 Cr.P.C., and which has been taken on file as PRC No.44 of 2017, is before this Court seeking quashment of the said case.

2. The case of the petitioners is that the respondent/complainant is a practicing advocate and his elder brother was engaged to one Rajalakshmi and the marriage was fixed on 21.4.16. The said Rajalakshmi's brother, one Brindha Krishnan had a dispute with regard to payment of interest with one Elangovan and in pursuant to the same, on 8.6.16, the said Brindha Krishnan is alleged to have assaulted and caused injury on Elangovan leading to the registration of a case in Crime No.269/2016 on the file of T-14, Mangadu Police Station for the offences u/s 241, 294 (b), 323 and 506 (ii) IPC.

3. It is the further case of the petitioners that the complaint of the respondent reveals that on 20.4.16, the respondent received a call from the said Rajalakshmi intimating that some persons are causing disturbance to her at her residence and the respondent along with his friend had gone to

help the said Rajalakshmi and the respondent, in the capacity of advocate called for police assistance. It is alleged that the police authorities had directed the parties to come to the police station and at the police station, at about 11.30 a.m., the opposite party, using filthy language, abused the respondent and assaulted him and detained him illegally. Upon police intervention, the respondent was released and, thereafter, the respondent lodged a complaint with the higher police officials as well as filed a separate complaint u/s 12 of the Protection of Human Rights Act r/w Section 200 Cr.P.C. before the State Human Rights Commission, which was taken on file as S.H.R.C. No.3330 of 2016.

4. It is the further case of the petitioners that subsequent to the above, after a year the respondent had filed a complaint on the file of the learned V Metropolitan Magistrate, Allikulam, Chennai, invoking the jurisdiction u/s 12 of the Protection of Human Rights Act r/w Section 200 Cr.P.C. on which the Magistrate had taken the case on file and issued summons to the accused and also recorded the statements of certain persons.

5. It is the further case of the petitioners that the present complaint had been filed by the respondent only as a counter blast to the criminal case registered against the respondent in furtherance to the complaint given by one Mrs.Meena, which has been registered on the file of K-11, CMBT Police Station in Crime No.307/2016 for the offence u/s 294 (b), 323, 506 (i) IPC r/w Section 4 of TNPWH Act. It is the further case of the petitioners that after invoking the jurisdiction of the Human Rights Commission by filing a complaint, which has been taken cognizance of, the respondent, to harass the petitioner, the respondent has parallely invoked the jurisdiction of the criminal court u/s 12 of the Protection of Human Rights Act, after a period of 15 months, which is impermissible as the criminal court cannot adjudicate on the same, as the same being not a penal provision and the criminal court not vested with jurisdiction. Therefore, the present petition is filed for quashment of the complaint filed before the learned Magistrate in PRC No.44 of 2017.

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6. Learned counsel appearing for the petitioners submitted that the filing of the complaint u/s 12 of the Protection of Human Rights Act before

the Metropolitan Magistrate, Allikulam, Chennai, is a clear abuse of process by the respondent in view of the decision in ***Rasicklal M.Gangani – Vs – Government of Goa (2004 (106) BOMLR 626)*** wherein it has been held that invoking the jurisdiction of the criminal court u/s 12 of the Protection of Human Rights Act after filing complaint before the State Human Rights Commission is not maintainable.

7. It is the further submission of the learned counsel for the petitioners that the statement of Ajay, who is said to have been present when the occurrence is alleged to have taken place has not been recorded by the respondent, but persons, who were not at all present during the occurrence, their statements have been recorded clearly show that the present complaint is only for the purpose of harassing the petitioners and a counter blast to the criminal case.

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8. It is the further submissions of the learned counsel for the petitioners that the cognizance taken by the trial court is *per se* bad, as even according to the respondent, the occurrence had taken place in the course of discharge of his official duties and, therefore, without necessary sanction, prosecuting the petitioners is impermissible.

9. The learned counsel appearing for the petitioners submitted that on an earlier occasion, this Court has quashed the impugned complaint against the 2nd accused in Crl.O.P.No.3672/2018 and therefore prays for extension of the said benefit to the present petitioners also.

10 . However to either reiterate or oppose the said submission of the learned counsel appearing for the petitioners, there is no representation on behalf of the petitioners.

11. This Court gave its careful consideration to the submissions of the learned counsel appearing for the petitioners and also perused the materials available on record.

12. This Court on an earlier occasion, against the very same impugned complaint, which was challenged by the 2nd accused, in Crl.O.P.No.3672 of 2018, observed as follows:

"11. The whole gamut of the case revolves around Section 12 of the Protection of Human Rights Act and the jurisdiction of the criminal court to take cognizance of a complaint filed u/s 12 of the Protection of Human Rights Act. To appreciate the said contention, it is relevant to refer to Section 12 of the Protection of Human Rights Act and the same is quoted hereunder for better clarity :-

***"12. Functions of the Commission.—**The Commission shall perform all or any of the following functions, namely:-*

(a) inquire, suo-motu or on a petition presented to it by a victim or any person on his behalf [or on a direction or order of any court], into complaint of—

(i) violation of human rights or abetment thereof; or

(ii) negligence in the prevention of such violation, by a public servant;

(b) intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court;

[(c) visit, notwithstanding anything contained in any other law for the time being in force, any jail or other institution under the control of the

State Government, where persons are detained or lodged for purposes of treatment, reformation or protection, for the study of the living conditions of the inmates thereof and make recommendations thereon to the Government;]

(d) review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation;

(e) review the factors, including acts of terrorism, that inhibit the enjoyment of human rights and recommend appropriate remedial measures;

(f) study treaties and other international instruments on human rights and make recommendations for their effective implementation;

(g) undertake and promote research in the field of human rights;

(h) spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means;

(i) encourage the efforts of non-governmental organisation and institutions working in the field of human rights;

(j) such other functions as it may consider necessary for the promotion of human rights.”

12. From the above provision of law, it is amply evident that Section 12 deals with the functions of the Human Rights Commission and the various acts that the Commission is

empowered to perform. The respondent has raised human rights violation in the precincts of the police station for which he has raised a complaint before the State Human Rights Commission, which the Commission has taken cognizance of.

13. Pursuant to taking cognizance of the complaint by the Commission, the respondent has preferred a complaint, once over, before the criminal court, which has also taken the same on file in PRC No.44/17. It is to be pointed out that the said complaint is filed u/s 12 of the Protection of Human Rights Act. As pointed out above, Section 12 deals with the functions of the Commission. It is not the case of the respondent in the complaint that the Commission has not followed the functions as envisaged u/s 12. In fact, before lodging of the complaint before the criminal court, way back on 20.4.16, the respondent had lodged the complaint before the State Human Rights Commission, which has been taken cognizance of in SHRC No.3330/16. However, on 21.7.17, almost after 15 months, the respondent has filed the present complaint before the criminal court.

14. Though it is alleged by the respondent, that the complaint before the State Human Rights Commission has been kept stale without any legal action, still that would in no way give jurisdiction to the criminal court to take cognizance of the

complaint filed by the respondent. Further, the respondent had kept silent for almost 15 months since the date of lodging the complaint before the State Human Rights Commission and the respondent has also not stated the steps taken by him to have his grievance redressed by the Commission. Merely stating that the Commission has not dealt with his complaint would not suffice to come before the criminal court by filing a fresh complaint, when the criminal court is not vested with jurisdiction. As pointed out above, Section 12 pertains only to the functions of the Commission and does not in anyway clothe the criminal court with jurisdiction to enquire into any lapses relating to human rights violation or the act of the Human Rights Commission in dealing with the matter. If at all the respondent is aggrieved with regard to inaction on the part of the State Human Rights Commission, the respondent being an advocate, who is well aware of the legal procedures, should have approached the proper higher forum, which has jurisdiction to deal with the issue and not knock on the doors of the criminal court to get his grievance redressed when the criminal court is not vested with any jurisdiction. The act of the respondent in filing the complaint before the State Human Rights Commission and, thereafter, after a period of over 15 months, coming before the criminal court and preferring a complaint, does not augur well with this Court.

15. Learned counsel for the respondent placed reliance on the decisions in **Ramiah – Vs – N.Narayana Reddy (Decd.) by Lrs. (2005 (1) LW 136)**, **K.Dhamodharan – Vs – R.V.Narbabi (2006 (1) LW Crl. 440)**, **N.Jeevanandham – Vs – Balaji & Ors. (2007 Crl. LJ) 2621)** and **Rajesh Das, IPS – Vs – T.N. State Human Rights commission (2010 (5) CTC 589)** to stress upon this Court that the criminal court has jurisdiction to entertain the petition. However, even a bare perusal of the said decisions clearly reveal that the facts in those cases are in no way way applicable to the present case and the ratio laid down in no manner supports the case of the respondent.

16. Not only infirmities galore in the action of the criminal court taking the case on file, but also the infirmities in many material documents and the provision of law has been lost sight of by the criminal court while taking the case on file. When the criminal court is not vested with jurisdiction per se to deal with the grievance raised by the respondent, the act of the criminal court in taking the case on file, is wholly unsustainable and not maintainable in view of the fact that already cognizance of the issue has been taken by the State Human Rights Commission. In such view of the matter, this Court is of the considered opinion that PRC No.44 of 2017 on the file of the V Metropolitan Magistrate,

Egmore (Allikulam), Chennai, does not stand the test of judicial scrutiny and it is liable to be quashed.

17. Accordingly, for the reasons aforesaid, this criminal original petition is allowed quashing the proceedings in PRC No.44 of 2017 on the file of the V Metropolitan Magistrate, Egmore (Allikulam), Chennai."

11. In view of the above, since the very same complaint was already quashed in respect of 2nd accused vide order dated 16.07.2021 in CrI.O.P.NO.3672 of 2018, this Court is inclined to extend the above said benefit, as granted to the 2nd accused, to the petitioners herein also. Therefore, this Criminal Original Petition is allowed. Consequently connected miscellaneous petitions are closed.

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Speaking/Non Speaking order

Index : Yes/No

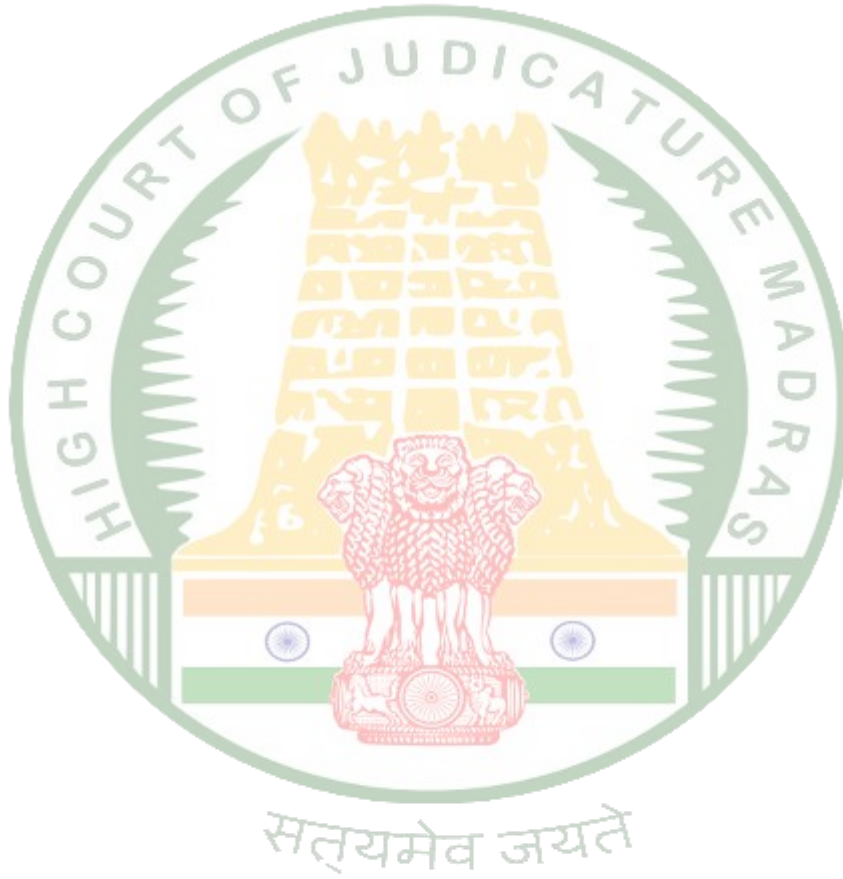
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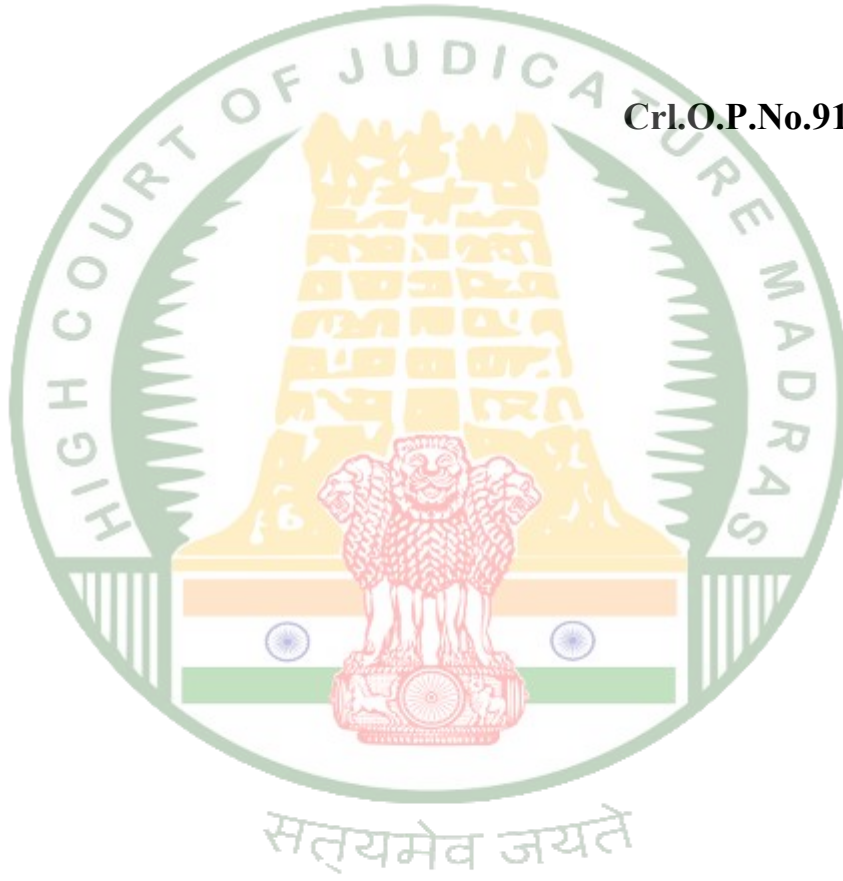
1. The V Metropolitan Magistrate, Egmore (Allikulam) Chennai.
2. The Public Prosecutor,
High Court, Madras.



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M.DHANDAPANI,J.

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