



W.P.No.23376 of 2004

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11.11.2022

CORAM:

**THE HON'BLE MR.JUSTICE S.S.SUNDAR
AND
THE HON'BLE MRS.JUSTICE.N.MALA**

**W.P.No.23376 of 2004
and
W.M.P.No.28315 of 2004**

R.Natesan

...Petitioner

Vs.

1.The State rep. by
Human Rights Commission
Of Tamil Nadu,
Royapettah High Road,
Chennai-14.

2.Santhosh Kumar

...Respondents

Prayer: Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Certiorari, calling for the records of the first respondent comprised in and by its proceedings in S.H.R.C. case No.578/98/RRS dated 31.10.2000 and quash the same.



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For Petitioner: Mr.K.Prabhakar
for Mrs.P.T.Ramadevi
For R1 : Mr.Arun Anbumani
For R2 : No appearance

ORDER

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

The writ petition is filed challenging the order of the State Human Rights Commission dated 31.10.2000, directing the State Government to pay a sum of Rs.50,000/- as compensation to the second respondent and to recover the same from the writ petitioner among other direction.

2. The facts leading to the complaint before the State Human Rights Commission briefly stated are as follows:

The second respondent, R.Santhosh Kumar was 20 years of age at the time of the incident which took place on 28.08.1998, his mother was a school teacher in a Government Higher Secondary School, Avadi. At the time of the incident he was undergoing treatment from SCARF (Schizophrenia Research Foundation (India) Chennai- 101).



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3. In about April 1998, a girl named Durgadevi who was living nearby the second respondent's house eloped with a boy named Suresh. The girl's parents gave a complaint to the police who were able to locate the boy and the girl and restored them to their parents. A few weeks thereafter both eloped again and as they could not be traced, the girl's father named V.Vasudevan lodged a complaint with the Sub-Inspector of Police, Rajamangalam Police Station. The petitioner herein took the second respondent to the police station and in the garb of enquiry stripped and tortured him. The second respondent's uncle Mr.Ashok Kumar on information went to the police station and found that his Nephew had been stripped and tortured. The second respondent thereafter filed a complaint to the State Human Rights Commission against the Sub-Inspector of Police, Rajamangalam, the petitioner herein, seeking compensation for violation of his human rights. The Commission on the basis of the complaint and the counter affidavit and on enquiry found that the petitioner was guilty of violation of Human Rights of the second respondent and therefore ordered the State Government to pay a compensation of Rs.50,000/- to the second respondent with a further direction to recover the same from the petitioner herein. The State Human Rights Commission further recommended disciplinary action against the Joint



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Commissioner of Police for having filed a false report and that too without verifying the case diary. The writ petitioner aggrieved by the said order has filed the above writ petition.

4. The learned counsel for the writ petitioner submitted that the State Human Rights Commission erred in rejecting the enquiry report of the Joint Commissioner of Police who enquired about the incident and reported that there was no violation of the petitioner's Human Rights. The counsel further submitted that the S.H.R.C. erred in relying on the evidence of second respondent's witnesses and further failed to note that the second respondent was one of the persons who assisted the girl to elope with the boy and therefore the petitioner had to take the second respondent to the police station for enquiry. The counsel further submitted that the allegations that the writ petitioner treated the second respondent inhumanely by stripping and torturing him were not true. The counsel therefore submitted that the Commission was not justified in passing the impugned order.

5. The learned counsel for the second respondent submitted that though the second respondent was not connected with the case, the petitioner took him for



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enquiry to the police station and tortured him. He was stripped and lathi charged and his uncle, Mr.Ashok Kumar vouched for the same before the S.H.R.C. in his evidence. The counsel further submitted that even the evidence on record clearly established that there was gross violation of the petitioner's Fundamental Rights by the writ petitioner.

6. We have heard the counsels on both sides and we have perused the entire materials on record.

7. The undisputed facts are that, on 28.08.1998 the second respondent was taken to the police station by the writ petitioner for enquiry into the complaint of elopement of a girl named Durgadevi with a boy named Suresh. On a complaint lodged by the girl's father V.Vasudevan, the petitioner in the garb of enquiry lathi charged, stripped and tortured the second respondent which caused the second respondent to lodge the complaint before the State Human Rights Commission.

8. The core issue to be decided in the writ petition is whether the writ petitioner had tortured the second respondent in the police station during enquiry



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and thus violated his Fundamental & Human rights. The evidence on record shows that the second respondent's uncle named Ashok Kumar who had gone to the police station on information that his Nephew was taken to the police station for enquiry saw that the second respondent was stripped and tortured with lathi. The said Ashok Kumar also gave evidence to that effect. The writ petitioner on the other hand relied on the enquiry report of the Joint Commissioner of Police who gave him a clean chit. The writ petitioner also relied on the evidence of R.W.1 and R.W.2, in support of his version that he had not tortured and stripped the second respondent. The evidence of R.W.1 and R.W.2 do not support the writ petitioner, for the simple reason that from their evidence it is clear that they were not present in the police station at the relevant time. According to the second respondent, the incident took place on 28.08.1998 at 8.30 a.m., this version of the respondent is corroborated by the time given in the Accident Register dated 29.08.1998. In the Accident Register, the time is recorded between 8.30 a.m. and 9.00 a.m., therefore on the basis of the time given in the Accident Register, it is seen that R.W.2 and R.W.3 were not present in the police station at the relevant time. R.W.2 in his evidence stated that he was in the police station at about 9.30 or 10.00 a.m. and R.W.3 stated that he was in the police station at 8.00 a.m.,



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therefore it is clear that both of them were not present when the torture of the second respondent happened. The Doctor gave evidence as P.W.5 and in his evidence he clearly stated that the injuries sustained by the second respondent were caused due to beating by lathi. Even the Accident Register records that it is a case of assault. The relevant entries in the Accident Register are as follows.

Nature of Injury and treatment

(State simple, grievous or opinion reserve.)} H/O ASSAULT

" Police SI at custody V4 - Rajamangalam Police Station - Senthil Nagar - Kolathur - Chennai - 99 c lathi between 8.30 Am - 9 Am on 28.08.1998.swelling (Contusion) seen on the right hand... both layer and extensive aspect mild confusion (L) hand...."

9. It would be pertinent to note here that the petitioner in his cross examination before the State Human Rights Commission deposed as follows:

"The complaint of Vasudevan does not mention anything about Santhosh Kumar, the complaint herein. My version in para 2 of my affidavit that Vasudevan had mentioned in his complaint that Durgha was enticed and taken away by Suresh with the active connivance of



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certain persons including the complainant herein is not true. Until the complainant was brought to the police station, there was nothing on record to show that Santhosh Kumar was in any way concerned in the alleged Kidnapping of Durgha. Law does not authorise the Investigating Officer to beat or torture. Santhosh Kumar was summoned only as a witness. I went to his house and brought him to the police station. At that time none was present in the house of Santhosh Kumar. Ashok Kumar was already known in the police station. He was in the police station some time after Santhosh Kumar was taken there. I had not informed Ashok Kumar. The case diary does not show that Santhosh Kumar had committed any misdeed or mistake. Hence, the allegation that he had filed this false complaint to cover his misdeeds and mistakes is not correct. S.I. Alagesan has also done some investigation in this case. Even his investigation had not revealed that Santhosh Kumar was in any way involved in the case."



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10. It is to be further noted that the case diary in Crime No.872/98 was called by the Commission and it was found that the girl's father did not mention the name of the second respondent as a suspect in his complaint. The names of one Suresh, Johnson and Senthil Kumar were given as persons suspected of kidnapping his daughter. From the case diary, it is seen that there was no justifiable reason for taking the second respondent to the police station for enquiry as he was not even arrayed as a suspect.

11. On a consideration of the statement made by the writ petitioner in cross examination and on the basis of the oral and documentary evidence on record, we are of the view that the writ petitioner was guilty of violation of the Fundamental and basic Human Rights of the second respondent.

12. The Hon'ble Supreme Court in a case reported in *1990 (1) SCC 422* held that the State was responsible for the tortious act of its employees. The Hon'ble Supreme Court in the case of *Rudul Sah Vs State of Bihar and Another* reported in *1983 (4) SCC 141* held as follows:

" The right to compensation is some palliative for the unlawful acts



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of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield. If civilisation is not to perish in this country as it has perished in some others too well known to suffer mention, it is necessary to educate ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the petitioner's rights. It may have recourse against those officers."

13. Article 21 of the Constitution guarantees the right to life and liberty. Over the decades the contours of this article are expanded and now it is well settled that right to life and liberty includes the right to live and die with dignity. Apart from the Constitutional right guaranteed under Article 21, every human by birth is entitled to certain basic human rights which are recognised universally by international covenants like the UDHR (Universal Declaration of Human Rights) which was adopted in 1948 and which was a milestone that laid the foundation for development of human right laws. In 1966 the UN General Assembly adopted international treatises that further shaped international human rights viz. the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR). Together these



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3 Covenants are called the "International Covenants". It is to be noted that the

Government of India is a signatory to the International Bill of human rights.

14. Some of the human rights recognised therein relevant to the case at hand are Right to liberty and security of person, Right to be treated with humanity in detention, freedom from torture etc. The States are obliged to Respect, Protect and fulfil these rights conferred by the International Covenants. When the instrumentalities of the state exceed their powers, the State is bound to compensate the citizen for violation on the principles of vicarious liability. The Hon'ble Supreme Court as early as in 1979 in *D.K. Basu Vs. State of West Bengal* reported in *AIR 1979 SC 1125* held that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes the only suitable remedy for redressal of the established infringement of the fundamental right to the life of a citizen by Public Servants. The Hon'ble Supreme Court in the said case held that claim of the citizen is based on the rule of strict liability and the State could not set up sovereign immunity as a defense to the claim.



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15. If the cherished dreams of an ideal society where all human beings are treated equally and with respect are to be achieved then such violations of constitutionally guaranteed rights and basic human rights have to be dealt with iron hands. Unless such officials are penalised with monetary compensation they will continue to harass and humiliate the public. It is therefore very appropriately stated that nothing hurts more than that which pinches the purse.

On the established fact of infringement of the second respondent's fundamental rights we do not see any justifiable reasons for interference and hence the writ petition is dismissed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

[S.S.S.R,J.]

[N.M.,J.]

Index : Yes/No
Internet : Yes/No
Speaking Order: Yes/No
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To

- 1.The Human Rights Commission
of Tamil Nadu,
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S.S.SUNDAR,J.
and
N.MALA,J.

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