

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2022

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 42731 of 2016

Evelyn Genela

... Petitioner

-VS-

1. The State of Tamil Nadu,
Represented by the Secretary to Government,
Home Department,
Secretariat, Chennai – 600 009.

2. The Additional Director General of Police &
Inspector General of Prisons,
Egmore, Chennai – 600 008.

3. The Superintendent of Prisons,
Central Prison,
Salem.

4. Senthil Kumar

5. Ravi

6. Murugam

7. Murugesan

8. Rathinakumar

9. Suresh

10. Leanen

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus, directing the First and Second

respondents to take appropriate action against Fourth and Sixth to Tenth Respondents for attacking the Petitioner's husband viz. Selvam, Son of Chinnadurai, Convict No. 2900, inside the Central Prison, Salem on 24.11.2016 and against Fifth Respondent who had refused to treat him and punish them.

For Petitioner : Mr. P.Pugalenth

For Respondents : Mr. P.Balathandayutham
Special Government Pleader
(for R1 to R3)

No appearance
(for R4, R6, R7, R9 and R10)

Not ready with the notice
(for R5 and R8)

ORDER

Heard Mr. P.Pugalenth, Learned Counsel for the Petitioner and Mr. P.Balathandayutham, Learned Special Government Pleader appearing for the First to Third Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. It is the case of the Petitioner that her husband, viz., Selvam, is a convict undergoing life imprisonment in Central Prison, Salem, where he was brutally attacked on 24.11.2016 by the warderers and on coming to know the same, the

Petitioner has on 30.11.2016 has filed this Writ Petition to take action against the Fourth to Tenth Respondents for punishing them in accordance with law.

3. The Second Respondent has filed Counter-Affidavit dated 31.10.2017 denying the allegations of ill-treatment meted out to the said Selvam at Central Prison, Salem.

4. Having due regard to the disputable questions of fact relating to violation of human rights involved in the matter, proper investigation has to be conducted and evidence of witnesses would also have to be recorded, which cannot be effectively carried out in summary proceedings under Article 226 of the Constitution. As such, it would be expedient to secure the ends of justice by invoking Section 12(a) of the Protection of Human Rights Act, 1993, as amended by Act 43 of 2006 (hereinafter referred to as 'the Act' for short), which has come into force with effect from 23.11.2006, read with Section 29 of the Act by requiring the State Human Rights Commission, Tamil Nadu to enquire into the complaint of violation of human rights of the said Selvam after issuing due notice and hearing all parties concerned following the prescribed procedure under the Act and depending upon its outcome, further action shall be taken in accordance with law.

5. It is also made clear that in view of the decision of the Hon'ble Supreme Court of India in *Paramjit Kaur -vs- State of Punjab* [(1992) 2 SCC 131] that the bar of the period of one year for the State Human Rights Commission to take cognizance of the matters under Section 36(2) of the Act would not be applicable where it is referred by the Court to the Human Rights Commission and the present Writ Petition, which has been immediately filed on 30.11.2016 in respect of an incident said to have taken place on 24.11.2016, has been pending in this Court thereafter, the State Human Rights Commission shall not be inhibited to decide the matter on merits without referring to the question of limitation in this case.

In the result, the Writ Petition is disposed on the aforesaid terms. No costs.

06.07.2022

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Index: Yes/No

Note: (i) Issue order copy by 22.07.2022.

(ii) Registry is directed to send a copy of the entire records in W.P. No. 42731 of 2016 to the State Human Rights Commission along with this order.

To

1. The Secretary to Government of Tamil Nadu,
Home Department,
Secretariat, Chennai – 600 009.
2. The Additional Director General of Police &
Inspector General of Prisons,
Egmore, Chennai – 600 008.
3. The Superintendent of Prisons,
Central Prison,
Salem.

Copy to

1. Evelyn Genela,
W/o C.Selvam,
No. 223/21A, Abragam Street,
Puthukkudiyerruppu,
Nagarkoil,
Kanniyakumari District.
2. The Secretary,
Tamil Nadu State Human Rights Commission,
143, P.S.Kumararaja Salai (Greenways Road),
Raja Annamalai Puram,
Chennai – 600 028.
3. The Registrar (Judicial),
Madras High Court,
Chennai – 600 104.

W.P. No. 42731 of 2016

P.D. AUDIKESAVALU, J.

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