



W.P.No.30867 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.P.No.30867 of 2018
and
W.M.P.No.36024 of 2018

Sirenjeevi Kumar

...Petitioner

Vs.

1.Tamil Nadu State Human Rights Commission,
No.143, P.S.Kumarasamy Raja Salai,
Greenways Road, Chennai – 600 028.

2.Government of Tamil Nadu,
Rep. by its Principal Secretary,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.

3.K.Mani

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorari, calling for the records of the first respondent in order dated 22.10.2018 passed in S.H.R.C.No.1147 of 2014 and quash the same in respect of the petitioner.



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W.P.No.30867 of 2018

For Petitioner : Mr.R.Ganesh Kumar

For Respondents : Mr.S.Wilson for R1

Mr.Vadivelu Deenadayalan
Additional Government Pleader for R2

Mr.R.Vinayagamoorthy for R3

ORDER

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

The petitioner is aggrieved by the order of the State Human Rights Commission imposing a fine of Rs.50,000/- on him for the human rights violation committed by him on the 3rd respondent.

2. The 3rd respondent lodged a complaint with the State Human Rights Commission contending that the petitioner and another constable who was cited as 2nd respondent before the Commission had enquired him about the people gambling in the area when he was waiting for the bus at Salavadaimedu bus stop to go to Salem along with his parents and wife. Disbelieving the denial made by the petitioner, the police officers viz., the petitioner herein and the constable Kathavarayan beat him up in the bus stop



W.P.No.30867 of 2018

itself and Kathavarayan took him to the police station. It is claimed that the police beat him up severely, which resulted in injuries in the spine.

3. Complainant would also contend that he had taken treatment in private hospital at Salem and Government Hospital and he was referred to Rajiv Gandhi Government General Hospital, Chennai for further treatment. Contending that the action of the petitioner and other police constable Kathavarayan amounted to violation of human rights, the complainant sought for compensation.

4. The petitioner herein and the Constable Kathavarayan filed a common counter contending that since the complainant was creating raucous in the bus stand they had taken him to the police station and registered an FIR against him under Section 107 of the Code of Criminal Procedure. After taking an assurance from him that he would appear before the Executive Magistrate he was let off.



W.P.No.30867 of 2018

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5. Before the State Human Rights Commission the complainant examined himself and his wife was also examined as a witness. The hospital records were produced. The respondents did not let in evidence. The State Commission accepting the claim that the Constable Kathavarayan was not present at the scene of occurrence, exonerated him. The Commission however found that the action of the petitioner in arresting the 3rd respondent and taking him to the police station for no fault of his, by itself would amount to human rights violation. The fact that injuries were suffered by the 3rd respondent in spine was also taken note of by the Commission. Failure on the part of the petitioner to lead evidence was put against him. The Commission eventually concluded that the action of the petitioner herein in taking a person to police Station and registering FIR under Section 107 Cr.P.C was in violation of the guidelines of the Hon'ble Supreme Court in *D.K. Basu Versus State of West Bengal* reported in [1997 (1) SCC 416]. The fact that an FIR was sought to be registered under Section 107 Cr.P.C and it was stated therein that the 3rd respondent was arrested as a preventive measure, the State Human Rights Commission



W.P.No.30867 of 2018

concluded that this action itself would amount to violation of human rights.

The fact that the petitioner did not choose to let evidence before the Commission was also considered by the Commission while levying penalty.

6. We have heard Mr.R.Ganesh Kumar learned counsel appearing for the petitioner, Mr.S.Wilson, learned counsel appearing for the 1st respondent, Mr.Vadivelu Deenadayalan, learned Additional Government Pleader for the 2nd respondent and Mr.R.Vinayagamoorthy, learned counsel for the 3rd respondent.

7. Mr.R.Ganesh Kumar, learned counsel appearing for the petitioner would vehemently contend that in the absence of any proof to the effect that the injuries caused were due to the assault made by the police, the Commission ought not to have come to the conclusion that there was human rights violation. The learned counsel would also fault the 3rd respondent for not having produced any document relating to the treatment which he had,allegedly, undertaken in the private hospital.



W.P.No.30867 of 2018

WEB COPY

8. The learned counsel for the petitioner would also submit that the 3rd respondent was taken to the police station only for the purpose of ensuring his appearance before the Executive Magistrate in order to take a bond of good behaviour in him under Section 107 Cr.P.C.

9. Contending contra, the learned counsel for the 3rd respondent would submit that in the absence of a cognizable offence having been committed, the petitioner ought not to have registered FIR against the 3rd respondent. A reading of the FIR also does not make out a cognizable offence according to the counsel.

10. We have considered the rival submissions. The fact that the 3rd respondent was arrested and taken to the police station is admitted in the FIR that has been lodged on the date of occurrence. Curiously FIR has been filed under Section 107 Cr.P.C which is not a charging section. Under Section 154 Cr.P.C FIR could be filed only in the event there is cognizable offence that has been committed by the person concerned. A reading of the



W.P.No.30867 of 2018

FIR that has been filed in this case, purportedly, under Section 107 Cr.P.C does not disclose any cognizable offence. Section 107 Cr.P.C is not a charging section. It does not define any offence. It does not prescribe any punishment for any offence. It is only an enabling provision, under which the Executive Magistrate could take an undertaking of good behaviour from a person, whose behaviour in public, in the opinion of such Executive Magistrate, would cause breach of peace. There is no such attempt made here.

11. Therefore, the very registration of FIR under Section 107 Cr.P.C is incorrect. Once it is found that there is no cognizable offence committed by the 3rd respondent and there is no occasion for the petitioner to have arrested the 3rd respondent, the natural corollary is that the 3rd respondent was restrained by the petitioner for at least some time illegally. This would definitely constitute human rights violation.

12. Even assuming that the claim of the 3rd respondent regarding the injuries has not been established, the very factum of arrest which is



W.P.No.30867 of 2018

admitted and found to be illegal is sufficient to sustain the order of the

Commission that there has been a violation of the human rights. We also find that the Commission has taken very lenient view and has not recommended departmental action against the petitioner, apart from granting compensation. Since the Commission had not chosen to recommend any departmental enquiry, we deem it fit to observe that this order for payment of compensation will not affect the service of the petitioner.

13. With the above observations this writ petition is dismissed.

No costs. Consequently, the connected miscellaneous petition is closed.

(R.S.M.,J.) (K.B.,J.)
07.11.2022

dsa

Index :No
Internet :Yes
Speaking order



W.P.No.30867 of 2018

To:-

1. The Secretary,
Tamil Nadu State Human Rights Commission,
No.143, P.S.Kumarasamy Raja Salai,
Greenways Road, Chennai – 600 028.
2. The Principal Secretary to Government of Tamil Nadu,
Home, Prohibition and Excise Department,
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W.P.No.30867 of 2018

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W.P.No.30867 of 2018

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