



W.P.Nos.8124 and 8139 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.02.2023

Pronounced on : 10.03.2023

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

and

THE HONOURABLE MR. JUSTICE V.LAKSHMINARAYANAN

W.P.Nos.8124 and 8139 of 2022

and

W.M.P.Nos.8109, 8128 and 8129 of 2022

W.P.No.8124 of 2022:

1.S.Mayilsamy,
Inspector of Police,
Perambalur Police Station,
Perambalur District – 621 212.

2.G.Angusamy,
Special Sub Inspector of Police,
Perambalur Police Station,
Perambalur District – 621 212.

3.S.Baskar,
Head Constable,
Perambalur Police Station,
Perambalur District – 621 212.



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4.P.Kannan,
Head Constable,
Perambalur Police Station,
Perambalur District – 621 212. ...Petitioners
vs.

1.The Registrar,
Hon'ble State Human Rights Commission - Tamil Nadu,
No.143, P.S.Kumarasamy Raja Salai,
Greenways Road,
Chennai – 600 028.

2.The Additional Chief Secretary to Government,
Home Department,
Government of Tamil Nadu,
Secretariat,
Chennai – 600 009.

3.Soundari,
W/o.Selvaraj ... Respondents

W.P.No.8139 of 2022:

1.R.Venkateshwaran,
Sub Inspector of Police,
Perambalur Police Station,
Perambalur District – 621 212.

2.N. Jayaraman,
Head Constable – 708,
Perambalur Police Station,
Perambalur District – 621 212. ...Petitioners

Vs.



W.P.Nos.8124 and 8139 of 2022

1.The Registrar,
Hon'ble State Human Rights Commission-Tamil Nadu,
No.143, P.S.Kumarasamy Raja Salai,
Greenways Road,
Chennai – 600 028.

2.The Additional Chief Secretary to Government,
Home Department,
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Secretariat,
Chennai – 600 009.

3.Soundari,
W/o.Selvaraj

... Respondents

Prayer in W.P.No.8124 of 2022: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari calling for the records relating to the impugned order dated 12.01.2022 made in SHRC.No.4135 of 2012 on the file of the first respondent and quash the same.

Prayer in W.P.No.8139 of 2022: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari calling for the records relating to the impugned order dated 12.01.2022 made in SHRC.No.4135 of 2012 on the file of the first respondent and quash the same.



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For Petitioners : Mr.A.Robinson
for Mr.M. Balakrishnan

For Respondents : Mr.S.Wilson for R1

Mr.P.Gurunathan,
Additional Government Pleader
for R2

Mr.D.Ashokkumar
for R3

COMMON ORDER

(Order of the Court was delivered by V. LAKSHMINARAYANAN, J.)

Since the issues in both the Writ Petitions are similar, they are disposed of by this Common Order.

2.These two Writ Petitions, W.P.Nos.8124 and 8139 of 2022, have been filed seeking for Writ of Certiorari to call for the records on the file of the first respondent in its proceedings SHRC.4135 of 2012 dated 12.01.2022 and to quash the same.



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3.The case of the petitioners in both Write Petitions are as follows:

(1)The third respondent, namely, one Mrs.Soundari had lodged a complaint with the State Human Rights Commission stating that her son by name Shanthakumar, who is aged about 28 years, works as a Driver. Whenever he was not working as driver, he would work in a tea shop as a helper. Fifteen days prior to the date of the complaint, one Karunanidhi who was having idli vending shop was murdered. On the night of the murder, the following persons, namely, (1)S.Mayilsamy (2)G.Angusamy (3)P.Kannan and (4)P.Nagarajan who were working as a Inspector of Police, Special Sub Inspector of Police, Head Constables, accompanied by two other policemen came over to the house of the petitioner and abused her and her family with filthy language. They also took away Shanthakumar to the Police Station.



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(2)The complainant has stated that she went to the Police Station, where she was again abused and shooed away. On the very next day, the police released the said Shanthakumar. All was well till 10.03.2012. On 10.03.2012, the aforesaid persons together with one Muruganantham and Jayaraman came over to her house at 10.00 p.m. stating that Shanthakumar was required for an enquiry in another case. Yet again, the Police abused her daughter in filthy language and ransacked her house. The Police had also taken one Prabhakaran, her nephew, who was studying B.B.A into custody. She has specifically alleged that her son was abused at the Police Station. She yet again went to the Police Station and begged for release of her son and nephew and the police again abused her in filthy language. Later on her nephew was released but the police tried to extort a confession from the said Shanthakumar. Shanthakumar consistently refused to give any such confession. According to her, the complaint given by one Periyasamy was a false complaint and the complaint was being lodged in order to get some favourable confession to resolve the murder of Karunanithi. It is to be noted that on the complaint lodged



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by Periyasamy, Shanthakumar was granted bail with the condition to report before the police twice everyday. It is also stated that the police had threatened the complainant's daughter that they will foist a prostitution case against her and drove her away too. The first complaint was lodged with the Human Rights Commission on 18.05.2012 and another complaint was lodged against the police stating that on account of the harassment meted out by the police, Shanthakumar consumed poison on 16.12.2012 and that he was admitted in the Government Hospital for treatment. He left the suicide note that he is committing suicide on account of the harassment by the police. The Commission, on receipt of the complaint, forwarded the same to the Director General of Police in-charge of its Investigation Wing and obtained a report.

3.The respondents filed a counter on receipt of the summons issued by the first respondent on 31.07.2018. It was their common case that Shanthakumar was arrested on account of threatening and demanding money from Periyasamy. On the basis of the latter's



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complaint, the police had lodged an FIR in Crime No.327 of 2012 under Section 392 of IPC. He was produced before the jurisdictional Magistrate and remanded to custody. Due to this arrest, the false complaint had been lodged against them and had prayed for dismissal of the proceedings.

4.The following issues were framed by State Human Rights Commission for consideration:

(1)Whether the respondents had foisted a false case against the petitioner's son which had led to his consuming poison with the aim of committing suicide and whether they had behaved in a manner violating the rights of the complainant?

(2)If the respondent had acted in a biased manner causing violations of human rights of the complainant, to what relief the complainant is entitled?”



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WEB COPY 5. Insofar as the first issue is concerned, the finding of the first respondent is

(1) that no attempt had been made to destroy the allegation that Shanthakumar had consumed poison only because of the torture and harassment meted out to him by the Writ Petitioners.

(2) that the name “others” in the FIR (the number of FIR has not been mentioned) but since the order reads eight persons, this Court has to presume that it refers to the case registered pursuant to the murder of Karunanidhi in Crime No.250/2012.

(3) The police had registered a case in Crime No.327 of 2012 with an intention to detain the accused under Act 14 of 1982. It further took note of the fact that the original complainant Periyasamy had turned hostile which shows that the Inspector of Police Mayilsamy had foisted a false case on Shanthakumar.



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WEB COPY (4)that the entry in the Accident Register made on 16.05.2012

and the suicide note shows that it was the Writ Petitioners, who were responsible, for the harassment suffered by PW2. It found fault with the police for not registering the case against the perpetrators who were responsible for the circumstances which led to the consumption of poison.

(5)On the basis of these findings, the first respondent held that there was gross human right violation of the children of the complainant and consequently, passed the following order :-

“(a)The Additional Chief Secretary to Government, Home Department, Secretariat, Chennai, shall pay a compensation of Rs.4,50,000/- (Rupees four lakhs and fifty thousand only) to the complainant Tmt.Soundari, W/o.Selvaraj residing at Netaji Nagar, Vadakku Madhavi Road, Perambalur Post, Perambalur



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Taluk & District within 8 weeks from the date of receipt of this order.

(b)After making such payment, the Additional Chief Secretary to Government, Home Department, Secretariat, Chennai may recover a sum of Rs.1,00,000/- (Rupees one lakh only) from the first respondent and a sum of Rs.50,000/- (Rupees fifty thousand only) each from the respondents 2 to 8.”

6.Before this Court, Mr.A.Robinson, learned counsel for the petitioner would contend (1) that there is no *locus standi* for the mother to file a complaint and that the complaint was dictated to her by the said Shanthakumar and the Advocate. (2) No specific overt act has been alleged against the Writ Petitioners. (3) that the petitioner had made false allegations as regards the status. (4) though allegations were made with the police alleged to have harassed one Selvam, but he was not examined before the Commission. The same



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situation applies with respect to Prabhakaran, the nephew of the third respondent. (5) the respondent's son is a habitual offender and he is wanted in another case in Crime No.82/2014 under Sections 147, 447, 294B and 506 of IPC. (6) the commission have not given any individual finding that the Writ Petitions have to be allowed.

7.Mr.S.Wilson, learned counsel for the first respondent Commission pointed out that the order is a reasoned one and this Court need not interfere with the same as just punishment had been granted to the police officials.

8.Mr.D.Ashok Kumar, learned counsel for the third respondent would argue that the writ petitioners had harassed third respondent's son Shanthakumar and had abused the family members and ransacked the house and they had not issued a summons under Section 41A of the Cr.P.C. He also state that the complaint lodged by Periyasamy was a false one and that the police attempted to withdrawal of the complaint before the commission by influencing Shanthakumar and



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the third respondent. He would refer to the case in Crime No.82/2014 and argued that though Shanthakumar's name was not found in the First Information Report he was arrested and remanded to judicial custody. He also argued that a complaint, that the police had ill treated him in the Police Station had been lodged. One Venkateshwaran, was responsible for the same. He further argued that the police have given evasive answers to the questions in the cross examination and therefore the suggestion should be deemed to have been admitted.

9.We have heard the learned counsels appearing for the parties, perused the records available and have carefully gone through the order.

10.During the hearing, it was admitted by both sides that Shanthakumar was not arrested in the first complaint dated 23.02.2012. The learned counsel for the third respondent in fact went on to say that the third respondent had been summoned on



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23.12.2012 for enquiry and have been asked to leave the station on

24.12.2012. He argued that since the name of the petitioner was not found in the FIR, the police had meted out a harassment by summoning the son of the third respondent for enquiry. We do not agree with the submission. It is too much on the part of the third respondent to argue that only person named in the FIR have to be summoned and the police should not call the persons whose names are not found therein.

11.It is well settled that in matters of investigation, right from the time of **Emperor v. Khwaja Nazir Ahmad (AIR 1945 PC 18)**, that it is the police officer who have exclusive jurisdiction and even the Courts constituted under the Code of Criminal procedure and the constitution Code do not have the power to interfere unless there is serious injustice meted out by the victims or misdirected investigation. Those situations did not arise here and this is a simple case where police wanting to investigate a murder and had summoned the person whom they thought might have some information.



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WEB COPY 12.The argument of Section 41A of Cr.P.C. deserves rejection because the police are required to issue notice in all cases where arrest is not required under Section 41(1) of CrPC and that too it arises only if there are credible information or suspicion that the person accused had committed the cognizable offence. Under Section 41(b), if the offence is above seven years, the police have the power to arrest without warrant. In the present case, the police have not arrested the son of the third respondent Shanthakumar but only summoned him for an enquiry.

13.We draw strength to this interpretation from two Judgments of this Court in **Dorand and others v. Superintendent of Police and another [2016] 1 LW (Cri) 305** and **State v. Tr.Nakeeran Gopal [(2010) 1 LW (Cri) 26]**. We recall the statement made in **Emperor v. Khwaja Nazir Ahmad (AIR 1945 PC 18)** as follows:

"In their Lordships' opinion, however, the more serious aspect of the case is to be found in



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the resultant interference by the Court with the duties of the police. Just as it is essential that every one accused of a crime should have free access to a court of justice so that he may be duly acquitted if found not guilty of the offence with which he is charged, so it is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province and into which the law imposes upon them the duty of 'enquiry'.

In India, as has been shown, there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would, as their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent



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jurisdiction of the Court. The functions of the judiciary and the police are complementary, not overlapping, and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always of course subject to the right of the Court to intervene in an appropriate case when moved under Section 491 of the Criminal Procedure Code to give directions in the nature of habeas corpus. In such a case as the present, however, the Court's functions begin when a charge is preferred before it and not until then. (AIR 45 PC 18 at 22).”

14.Insofar as the second offence is concerned namely in Crime No.327/2012, the complainant specifically named Shanthakumar in the complaint and therefore, he was an accused in this case. The factum that subsequently, nearly after a decade, the case has ended in acquittal does not mean the police cannot arrest the person who is a



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named accused. It is pertinent to point out that the said

Shanthakumar was produced before the jurisdictional Magistrate on

11.03.2012 and the Court recorded the following statements:

“Accused produced at 09.18 p.m. on 11.03.12

No complaint against police and No ill treatment

Grounds of Remand explained to accused. Blood

relative has been verified at his arrest Remanded

him the produce custody till 22.03.12 for u/s 392

IPC.”

15.If the case as projected by the third respondent is true ,
Shanthakumar would have stated that the police had not only
harassed him but also tortured him on 23.02.2012 in the police station
and yet again, after his arrest on 11.03.2012. The absence of the said
statement and the categorical statement that no ill-treatment has been
meted out and no complaints are sought against the police officer has
been ignored by the first respondent. Further, the learned counsel
argued that it has come out during the course of evidence as well as



during the arguments, that there is no proof of ransacking, torture or abusive language. Though allegations are made against the police officials that they had abused the complainant and her children, apart from the interested witnesses, statements of the mother and the son, even the complainant's daughter was not examined before the Commission. Furthermore, no person in the neighbourhood were examined before the Commission to substantiate abuse or torture or ransacking.

16.To this, when the *lacunae* is pointed out, the learned counsel for the third respondent argued that the State Human Rights Commission is not a trial court for him to prove the statements made and not being a judicial proceedings, the Commission can rely upon the oral statements of the parties.

17.A perusal of the Protection of Human Rights Act, 1993, is essential here. As per Section 29, the provisions of Sections 9, 10, 12, 13, 14, 15, 16, 17 and 18 apply to a State Human Rights



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Commission also. Under Section 13, the Human Rights Commission while enquiring into the complaint exercises the powers of the Civil Court, which implies that it is not the threshold of “beyond a reasonable doubt” that applies, but the higher test on “preponderance of probabilities” that have to be adopted.

18.The Commission could have exercised the power under Section 13(2) and summoned Periyasamy and examined him to find out the allegations made in the complaint. It was not resorted to. This is moreso when he stood by his complaint and gave a statement to the investigation wing of the commission on 12.04.2013. The fact that in 2019, the complaint given by Periyasamy ended in acquittal, does not help the third respondent. This is because not only the complaint registered by the police, the final report was filed before it and the final report was taken on file, charges were framed, parties went to trial to test the charge and finally had ended into acquittal. The Supreme Court of India and this Court on more than one occasion held that if the complaint reveals the cognizable offence it is the



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duty of the police to register an FIR and take up the matter for investigation.

19.The offence under Section 392 of IPC wherein the punishment extends to ten years is not a case where the punishment is less than seven years and therefore, to state that in case of all the offence enumerated in the Indian Penal Code, the Police will now issue summons and only thereafter, take steps to arrest would be contrary to the settled position of Criminal Law. To reiterate the Power to arrest is the discretion of the concerned Police Officer and the same cannot be interfered by the Court, or any other authorities unless extenuating circumstances exist.

20.In the present case, not only the accused was produced before the Magistrate within the time specified, but the Magistrate had taken pains to explain the “grounds of remand” to the accused. This commission ought not to have ignored this aforesaid recording of the Magistrate on the mere statement of the interested witness,



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namely, the accused Shanthakumar and his mother, the third respondent/complainant. This Court is consciously specifically not dealing with the complaint lodged against the accused in the year 2014. It is the irrelevant fact for the present Writ Petition. Further, a perusal of the evidence of PW1 (Page 146 of the typed set of papers filed in the Writ Petitions) shows that no specific allegation has been made against any Police officer. The Court cannot presume that after release on bail, Shanthakumar was continuously harassed by the police. It is pertinent to note that no petition was filed before the concerned Magistrate to vary the conditions of bail, on the ground, that the police were harassing the accused. Several important and crucial facts have been ignored. The findings does not answer the test of evidence being beyond preponderance of probabilities and the order is based on presumptions and assumptions. Hence, it is perverse. Consequently, it is the duty of this Court to interfere with the order and set aside the same.



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WEB COPY In fine, these Writ Petitions are allowed and the order passed by the first respondent dated 12.01.2022 in SHRC.No.4135 of 2012 is set aside. The complaint shall stand dismissed. Consequently, connected Miscellaneous Petitions are closed. No costs.

**(V.M.V., J) (V.L.N., J)
.03.2023**

Index : Yes / No
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Neutral Citation : Yes / No
mps

To

1.The Registrar,
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V.M.VELUMANI,J.

and

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mps

Pre-delivery Orders in
W.P.Nos.8124 and 8139 of 2022
and W.M.P.Nos.8109, 8128
and 8129 of 2022

10.03.2023