



W.P.No.15838 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 28.02.2023

CORAM

THE HONOURABLE Ms. JUSTICE V.M.VELUMANI

AND

THE HONOURABLE Mr. JUSTICE V.LAKSHMINARAYANAN

W.P.No.15838 of 2022

AND

W.M.P.No.15139 of 2022

D.Swaminathan
Addl. Deputy Superintendent of Police
Cyber Crime Department
Thanjavur

.. Petitioner

Vs.

1.The Registrar
State Human Rights Commission
143, P.S.Kumarasamy Raja Salai
Greenways Road
Chennai 600 028

2.E.Kalyani

3.Alagesan
Inspector of Police
Mayiladuthurai Police Station
Mayiladuthurai



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4.V.Sundarambal
Woman Sub-Inspector of Police
Nagapattinam

.. Respondents

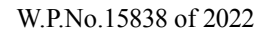
Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari to call for the records of the 1st respondent dated 10.05.2022 passed in S.H.R.C.Case No.3940 of 2018 and quash the same.

For Petitioner	: Mr.D.Selvam for Mr.S.Mohan
For 1 st Respondent	: Mr.T.C.Gopalakrishnan
For 2 nd Respondent	: Mr.S.Nedunchezhiyan
For 3 rd Respondent	: No appearance
For 4 th Respondent	: Mr.P.Dinesh Kumar

ORDER

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

This writ petition challenges the order passed by the 1st respondent holding that the Government of Tamil Nadu shall pay Rs.5,00,000/- as compensation to the 2nd respondent/complainant and to recover the same from the salary of the writ petitioner. In addition, the State Human Rights Commission (in short “ the Commission”) has recommended initiation of



departmental action as well as criminal prosecution against the writ petitioner.

2. The case of the 2nd respondent/complainant is that on 03.11.2011, one Srinivasan and herself had entered into a loan agreement with one Manjula for selling a property for a sale consideration of Rs.50,25,000/-. They have received several amounts from Manjula on various dates, in all amounting to Rs.12,00,000/-. Manjula was supposed to settle the remaining amount of Rs.38,25,000/-, prior to registration of the property. Srinivasan through his wife transferred his share, by way of a sale deed, in document No.932/2012.

3. It is the further case of the 2nd respondent/complainant that despite repeated requests by Manjula, the 2nd respondent/complainant refused to perform her part of sale agreement dated 03.11.2011. Consequently, it ended up in the civil court by presentation of a suit in O.S.No.175 of 2017 on the file of the Principal Sub Court, Mayiladuthurai. It is also stated that another suit in O.S.No.52 of 2012 had been filed and later withdrawn with



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liberty to file a fresh suit on the same cause of action. These facts are narrated only to show that there is an existing civil dispute between the 2nd respondent/complainant and Manjula.

4. Be that as it may, the said Manjula gave a complaint to the police officials stating that Srinivasan and his wife have transferred the property and therefore, have committed offences under Sections 406, 468, 447 and 420 IPC. The writ petitioner was, then working as Deputy Superintendent of Police, Prohibition and Enforcement Wing, Nagapattinam. He was holding additional charge of Anti Land Grabbing Special Cell, Nagapattinam.

5. The writ petitioner had taken a categorical stand in his counter affidavit filed before the Commission that the power to file a case of land grabbing is available only with the Superintendent of Police. Prior to the filing of the FIR, the matter had been referred to the Assistant Director of Prosecution, Nagapattinam and Thanjavur. She had given her opinion on 05.03.2018, stating that the allegations made in the complaint by Manjula



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against the 2nd respondent/ complainant made out a case for criminal prosecution. The papers were forwarded in proceedings C.No. C3/458/IGP/CZ/2018 dated 09.01.2018 and an endorsement was made on the left hand side of the forwarding papers directing “registration of FIR” on 09.03.2018. An FIR was registered in Crime No.1 of 2018 on 12.03.2018. On the basis of the FIR, the police arrested the 2nd respondent/complainant and she was presented before the Magistrate for remand. The learned Judicial Magistrate No.II, Nagapattinam did not accede to the request of the police and refused to pass an order for judicial custody. Subsequent to this event, the 2nd respondent/complainant lodged a complaint with the Commission on 27.04.2018. It has been submitted by the learned counsel for the petitioner that the said endorsement was made by the Superintendent of Police.

6. On receipt of this endorsed proceedings, the Deputy Superintendent of Police, who is the writ petitioner had made further endorsement directing the Inspector, DCB, in charge of Anti Land Grabbing Special Cell to “register an FIR and investigate”. The endorsement to register an FIR was



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made on 12.03.2018. Prior to giving this direction, the writ petitioner had sought for “necessary orders may please be passed to register a case against the counter petitioner”. This shows it was not an individual decision of the writ petitioner as against the 2nd respondent/complainant, but, had taken the opinion of his superiors to proceed further in the matter. Accordingly, on 12.03.2018, an FIR was registered in crime No.1/2018 by the Sub-Inspector of Police/4th respondent.

7. The complaint had been lodged by the 2nd respondent as against the Deputy Superintendent of Police/writ petitioner on the following points :

- i. That he had received money as bribe from Manjula.
- ii. That he had taken up a civil dispute for investigation.
- iii. On account of arrest made by the respondents 3 and 4, she was defamed and humiliated, which assassinated her character, reputation and prestige.
- iv. She also made allegations that the intention of Manjula was to grab all the buildings through black money, keeping police in her pocket to create sense of terror in Ganapathy Nagar, buying property through benami transactions, maintenance of goonda force numbering 50 and terrorising all aged persons to demolish the properties belonging to persons of OBC, SC and ST.



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- v. She spoke about the previous incident that took place on 14.12.2017 and registration of FIR - an FIR had been registered at the instance of the 2nd respondent/complainant pending civil suit which has commenced in 2011.
- vi. That notice was sent by the 2nd respondent/complainant to Manjula as well as to the writ petitioner and no action was taken by the writ petitioner as against Manjula and a recent paper cutting stating human rights violation by the police authorities.

8. The Commission took up the matter for enquiry in S.H.R.C.No.3940 of 2018. Counter affidavits were filed by the writ petitioner and respondents 3 and 4. The arrest of the 2nd respondent/complainant by the respondents 3 and 4 was not denied, but, a stand was taken that they arrested the 2nd respondent/complainant as the writ petitioner had directed to register FIR. The Commission drew an adverse inference on the ground that the writ petitioner has not examined himself, in order to substantiate his case that he was on bandobust duty at Samayapuram Temple on 12.03.2018 – date of arrest.



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9. We heard Mr.D.Selvam, learned counsel appearing on behalf of Mr.S.Mohan, learned counsel on record for the petitioner, Mr.T.C.Gopalakrishnan, learned counsel appearing for the 1st respondent, Mr.S.Nedunchezhiyan, learned counsel appearing for the 2nd respondent and Mr.P.Dinesh Kumar, learned counsel, who appeared for the 4th respondent. We carefully considered the material records, the complaint, the counter affidavit and the impugned order passed by the Commission.

10. At the outset, we have to note that the Commission gave a curious finding, not supported even by the complainant that the root cause for “torture and harassment” of the police. It is not even the case of the 2nd respondent/complainant that she was tortured and harassed by the respondents 3 and 4. It was her case that the police ought not to have taken up the civil dispute for investigation. Another point held against the writ petitioner is that he had not followed the principle laid down in *Arnesh Kumar Vs. State of Bihar and Another* [(2014) 8 SCC 273] and consequently, the Commission gave the aforesaid recommendations of recovery, initiation of departmental action and criminal prosecution.



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11. The learned counsel for the writ petitioner reiterated the submissions made in the affidavit and the same were rebutted by the learned counsel for the 1st respondent/Commission as well as by the 2nd respondent/complainant.

12. The learned counsel for the writ petitioner stated that he had merely forwarded the papers and he had no other role to play. This position was accepted by the learned counsel for the respondents 1 and 2. However, they had gone to add that it was a civil dispute and the writ petitioner ought not to have exercised the power of giving directions to register an FIR and he, having exercised that power, is answerable to the Commission. As pointed out above, the FIR was not registered by the writ petitioner and it was registered by the 4th respondent. Prior to registration of the FIR, the Superintendent of Police, Nagapattinam was careful to take opinion of the Assistant Director of Prosecution, Nagapattinam and Thanjavur and in turn, sent it to the writ petitioner, who had sent it to the Inspector of Police, DCB



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and following the chain of command, he has sent it to the 4th respondent.

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13. A reference has been made to Section 36 Cr.P.C., which states that the powers exercised by the superior officers is same as the powers exercised by the Station House Officers. It is too much to expect the Deputy Superintendent of Police, not to obey the directions given by the Superintendent of Police and to refer the matter as one civil dispute, when the Superintendent of Police has passed such an order on the basis of the opinion given by an expert in the field *viz.*, the Assistant Director of Prosecution.

14. Apart from that, the 2nd respondent/complainant has not proved any violation of human rights, in order to attract the severe condemnation that have been given by the Commission on the writ petitioner. The finding of the Commission in paragraph 44 is contrary to the record, as it was not the writ petitioner, who directed registration of the complaint, but, the Superintendent of Police, in charge of the District. The police being a uniformed service, a subordinate is bound to obey the direction of his superior and to expect him not to do so, will lead to deleterious effect in



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maintaining law and order and the chain of command. It is not the case of an individual decision and it is the order of a superior officer, supported by legal opinion by an expert in the field.

15. The Commission had further not given a finding about the allegation with respect to the alleged bribery of the writ petitioner from the said Manjula. Wild allegations do not prove the case and to rely upon an *ipse dixit* statement of the 2nd respondent/complainant is perverse. Unless and until violation of human rights is proved, the issue of granting compensation or proceeding further with departmental action, will not arise. As the basis of the complaint itself does not stand to legal scrutiny, the findings of the Commission is erroneous and perverse and it requires interference at our hands.

16. Another reason, we are constrained to interfere is that the complaint was registered by the 4th respondent, on obeying the directions of the 3rd respondent. The Commission had dismissed the complaint as against the respondents 3 and 4 and the 2nd respondent/complainant had not



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challenged the order of dismissal against them.

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17. It is brought to our notice by the learned counsel for the writ petitioner that the writ petitioner is due to retire today.

18. In view of the foregoing reasons, the order of the Commission in S.H.R.C.No.3940 of 2018 dated 10.05.2022 is set aside and the complaint filed by the 2nd respondent/complainant is dismissed.

In the result, the writ petition is allowed. No costs. Connected miscellaneous petition is closed.

(V.M.V.,J.) (V.L.N.,J.)
28.02.2023

Index : Yes/No
Neutral Citation : Yes/No
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To

The Registrar
State Human Rights Commission
143, P.S.Kumarasamy Raja Salai
Greenways Road
Chennai 600 028



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V.M.VELUMANI, J.
AND
V.LAKSHMINARAYANAN, J.

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