



W.P.No.20148 of 2022
and W.M.P.No. 19368 of 2022

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.01.2023

DELIVERED ON : 02.02.2023

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

and

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

W.P.No.20148 of 2022

&

W.M.P. No.19368 of 2022

1.Rajakumar,
Deputy Superintendent of Police,
Perundurai Sub-Division,
Erode District.

2.K.Sugavanam,
Inspector of Police,
Perundurai Police Station,
Erode District.

3.Ramprabu,
Inspector of Police,
Perundurai Police Station,
Erode District.

4.A.Edwardraj,
Sub-Inspector of Police,
Perundurai Police Station,



W.P.No.20148 of 2022
and W.M.P.No. 19368 of 2022

WEB COPY

Erode District.
(since retired from service)

...Petitioners

Vs.

1.The Registrar,
State Human Rights Commission,
No.143, PS.Kumarasamy Raja Salai,
Greenways Road, Chennai - 28.

2.C.K.Nandhakumar

3.State of Tamilnadu
Rep. by its Secretary, Home
(Police-2) Department,
St.George Fort, Chennai.

... Respondents

(R3 impleaded vide order dated 26.10.2022 made in
WMP.No.27367/2022 in W.P.No.20148/2022)

Prayer : Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Certiorari to call for the records in SHRC Case
No.4499 of 2019 dated 10.06.2022 on the file of the 1st respondent and
order passed by the 3rd respondent in G.O. (2D) No.219 dated
27.06.2022 and quash the same.

(Prayer amended vide order dated 26.10.2022 made in
WMP.27366/2022 in W.P.No.20148/2022)

For Petitioners	: Mr.A.Sundaravadhanan
For R1	: No appearance
For R2	: Mr.N.Manokaran
For R3	: Mr.A.Selvendran
	Special Government Pleader



WEB COPY



W.P.No.20148 of 2022
and W.M.P.No. 19368 of 2022

ORDER

(R.HEMALATHA, J.)

The four petitioners are policemen who have allegedly violated the human rights of the second respondent as per the State Human Rights Commission's order dated 10.06.2022 in Case No.4499/2019 and have challenged the same in this petition.

2.Briefly into the facts :

- i. All the four policemen were attached to the Perundurai Police Station while the first petitioner was in charge of Perundurai Sub Division.
- ii. A complaint dated 18.12.2019 was given by the second respondent who was in construction business and also having a Trust doing social work in Erode. He was reportedly a crusader against wrong doings in the society. He had, earlier on 17.11.2014, reported illegal sand mining in Karumandi and Sellipalayam Villages to the Erode Collector by way of a complaint which prompted the



W.P.No.20148 of 2022
and W.M.P.No. 19368 of 2022

WEB COPY

Revenue Divisional Officer to investigate and a penalty of Rs.1.96

Crores was levied on one Subramaniam and Senathipathi who were allegedly involved in it.

iii. However, in the appeal before the District Collector, Erode, the earlier order of the Revenue Divisional Officer was set aside. This was contested by the second respondent in W.P.No.27646 of 2017 in this Court and a re-enquiry was ordered on 30.10.2017 in the said petition by this Court.

iv. The Revenue Divisional Officer, Erode again levied a penalty of Rs.7.99 Crores against the same persons vide orders dated 23.02.2018 after reinvestigation.

v. According to the second respondent, this angered the said Subramaniam and Senathipathi who instigated the first petitioner and thereafter a criminal case in Crime No.93/2018 was filed against the second respondent in which he obtained anticipatory bail.

vi. This Court in the earlier W.P.No.27646 of 2017 had ordered for a digital survey to be done which was not complied with by the



W.P.No.20148 of 2022
and W.M.P.No. 19368 of 2022

WEB COPY

Revenue Authorities and therefore, a contempt petition was filed by the second respondent.

vii. Consequent upon this the second and third petitioners trespassed into the second respondent's house on 08.06.2018 at about 01.30 pm, allegedly assaulted him and took him to the office of the first petitioner.

viii. A false case was foisted against the second respondent and later on 08.06.2018 he was detained under Goondas Act. However, subsequently the Advisory Committee, vide its order dated 30.07.2018 quashed the detention order under Goondas Act.

ix. The second respondent was released from jail on 01.08.2018 and later on 08.08.2018 when he was with his son on a two wheeler, the said Subramaniam and Senathipathi intercepted and assaulted him. He was injured and treated in the hospital. Therefore, the petitioners 1 to 4 have violated human rights of the second respondent and need to be punished.

x. The State Human Rights Commission after examining the oral and documentary evidence on both sides concluded that the petitioners



W.P.No.20148 of 2022
and W.M.P.No. 19368 of 2022

WEB COPY

had indulged in human rights violation by foisting false cases against the second respondent and detaining him under the Goondas Act causing immense agony to him and also ruining his entire life. The State Human Rights Commission had made the following recommendations:

(i) The Government of Tamil Nadu shall pay a compensation of Rs.10,00,000/- (Rupees Ten Lakhs only) to the complainant Thiru.C.K.Nandhakumar, S/o. Chinnasamy residing in Door No.50, Taskant Street, Perundurai, Erode District, within one month from the date of receipt of a copy of this recommendation and the Government of Tamil Nadu may recover Rs.5,00,000/- (Rupees Five Lakhs only) from the 1st respondent and Rs.2,00,000/- (Rupees Two Lakhs only) each from the respondents 2 and 3 (totally Rs.4 lakhs) and Rs.1,00,000/- from the 4th respondent as per the Rules.

(ii) This Commission also recommends to initiate



W.P.No.20148 of 2022
and W.M.P.No. 19368 of 2022

WEB COPY

*disciplinary proceedings against the respondents 1 to 3 as
per the Rules.*

3. Heard Mr.A.Sundaravadhanan, learned counsel for the petitioners, Mr.N.Manokaran, learned counsel for the second respondent and Mr.A.Selvendran, learned Special Government Pleader for the third respondent.

4. Mr.A.Sundaravadhanan, learned counsel for the petitioners would contend that there was no element of human rights violation as alleged by the second respondent. According to him, the second respondent had the dubious distinction of a past criminal background with many cases pending against him. According to the counsel, the second respondent had a running feud with the said Subramaniam and Senathipathi about which the petitioners were not aware or interested. The petitioners had only acted as expected of them to ensure law and order and the police cases against the second respondent had valid grounds and trying to cast aspersions for the official duty is totally



W.P.No.20148 of 2022
and W.M.P.No. 19368 of 2022

WEB COPY

unacceptable. It was also contended that the decision about Goondas Act was a collective decision and cannot be attributed to the first petitioner alone. He also argued that there are many cases where Goondas Act detention was set aside and merely because the detention under Goondas Act has been set aside it need not necessarily imply violation of human rights. It was also contended that the CCTV images did not show any alleged violence or force used by the petitioners while questioning the second respondent. He also argued that such dangerous and hasty conclusions on human rights violation would make the police force ineffective and useless. Therefore, he prayed for the petition to be allowed and the order of the State Human Rights Commission be quashed.

5. Per contra, the learned counsel for the second respondent contended that no notice under Section 41-A of Cr.P.C was issued to the second respondent before the arrest thereby not complying with the directions of the Hon'ble Supreme Court. According to him, his 55 days detention under Goondas Act caused a blot in his reputation and that the petitioners had always acted as per their Master's wish, their master being



W.P.No.20148 of 2022
and W.M.P.No. 19368 of 2022

WEB COPY

the politician who had major role in the illegal sand mining. The second respondent by virtue of being the whistle blower in the entire episode, was always targeted by the police. Therefore, he argued that the State Human Rights Commission was right in concluding that there was human rights violation and also right in recommending for the award of compensation of Rs.10,00,000/-.

6. Having gone through the records and the deposition of the witnesses on both sides, it can be seen that the second respondent had a criminal track record. He had himself deposed that out of four criminal cases he went to jail in two cases. He has also been in the thick of controversies. The State Human Rights Commission going by the record presented to it opined that he had exposed the sand mafia and got huge revenue for the Government. The second respondent has defended that all the criminal cases against him were the result of his involvement in exposing the misdeeds of the bad elements. However, neither the criminal cases against him nor the expose he had done to save the Government of huge exchequer can decide his character, as to whether he was a villain or



W.P.No.20148 of 2022
and W.M.P.No. 19368 of 2022

WEB COPY

a real life hero. Many of the criminal cases he is facing pertain to harassment of women, indecent behaviour with women, wrongful confinement, extortion, causing grievous injuries etc. The State Human Rights Commission in its order has relied on the *Arnesh Kumar vs. State of Bihar & another (Criminal Appeal No.1277 of 2014)* guidelines and had concluded that the absence of any notice by the petitioners under Section 41-A of the Code of Criminal Procedure proves fatal to the case of the petitioners. The State Human Rights Commission also had observed thus :

"The complainant is not a habitual offender and he was not involved in any grave offence like murder, decoity, robbery and there is no allegation that he will destroy the evidence".

It was also observed that :

"The Hon'ble Supreme Court of India also categorically held that failure to comply with the directions aforesaid (Arnesh Kumar) guidelines shall apart from rendering police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of Court to be instituted before the High Court having territorial jurisdiction."

7. The two discrepancies we can observe in these observations



W.P.No.20148 of 2022
and W.M.P.No. 19368 of 2022

WEB COURT by State Human Rights Commission are:

- a) The complainant was a habitual offender.
- b) No mention of human rights violation in the Apex Court Ruling.

8. Now the question which naturally arises is whether human rights violation element is there if no notice is given under Section 41-A of the Code of Criminal Procedure. It is definitely a procedural lapse but will not constitute a violation of human rights. Moreover, the second respondent was a habitual offender.

9. The second respondent had made another allegation that he was very much at home on 06.08.2018 at the time an incident was alleged to have taken place in which one Chandrasekaran was threatened by the second respondent and an FIR was registered in Cr.No.301/2018. In fact the second respondent had brought in photographic evidence as an alibi that he was at his home at the time of the alleged incident. But the said Chandrasekaran had complained that the second respondent had threatened him and demanded money. We do not comprehend as to how



W.P.No.20148 of 2022
and W.M.P.No. 19368 of 2022

WEB COPY

the State Human Rights Commission does trial of that case in its limited scope of human rights violation. Even assuming that there was suspicion in the incident it can be decided only in the criminal court where the trial is in progress. No element of human rights violation is visible in this. Similarly, the contention of the second respondent that injuries were caused to him when he was roughed up and assaulted by the petitioners is also not convincing. He has not informed the Magistrate at the time of his remand about any violence against him and it is clearly an after thought in the State Human Rights Commission to get his case proved by hook or crook. In fact, he had deposed as PW1 that he was not even allowed to wear his footwear, while the photo he produced shows him with his footwear. PW2 who is the mother of the second respondent in her deposition has stated that the third petitioner had not entered their home and only remained at the staircase in the entrance of the house. Thus, the allegation of trespass is also doubtful.

10. The second respondent has produced medical wound certificate and x-ray copies for the injuries he had sustained in a brutal



W.P.No.20148 of 2022
and W.M.P.No. 19368 of 2022

WEB.COM

attack by the said Subramaniam and Senathipathi. An FIR was also registered for that incident on 08.08.2018 under Sections 341, 363, 324 and 506 (2) IPC in Crime No.443/2018 against the said Subramaniam and Senathipathi. According to the deposition of the second respondent, when an FIR was registered against him for a complaint by one Chandrasekaran on 08.06.2018, similarly an FIR was registered against the said Chandrasekaran in a counter complaint given by the second respondent. This does not find place in the entire records of this case filed in State Human Rights Commission.

11. In *Joginder Kumar vs. State of UP* reported in (1994) 4 SCC 260 : 1994 SCC (Cri) 1172, the Apex Court observed in Paragraph nos.8 & 9 thus:

"8.The horizon of human rights is expanding. At the same time, the crime rate is also increasing. Of late, this Court has been receiving complaints about violation of human rights because of indiscriminate arrests. How are we to strike a balance between the two?

9.A realistic approach should be made in this



W.P.No.20148 of 2022
and W.M.P.No. 19368 of 2022

WEB COPY

direction. The law of arrest is one of balancing individual rights, liberties and privileges, on the one hand, and individual duties, obligations and responsibilities on the other; of weighing and balancing the rights, liberties and privileges of the single individual and those of individuals collectively; of simply deciding what is wanted and where to put the weight and the emphasis; of deciding which comes first — the criminal or society, the law violator or the law abider;....."

12. The arrest in Cr.No.308/2018 is one of the instances in which the second respondent has alleged physical assault on him after he was allegedly roughed up in his house and forcibly taken to the first respondent's office which was not the place he ought to have been taken. In fact in this case the plea of alibi was taken by the second respondent. As already discussed, the photos and CCTV clipping were not conclusive evidence for any physical assault or forcible arrest. This was also not raised by the second respondent before the Magistrate. It was contended that he was arrested without notice under Section 41-A of the Code of Criminal Procedure. In the decision in *Arnesh Kumar vs. State of Bihar*, relied on by the learned counsel for the second respondent, the following



W.P.No.20148 of 2022
and W.M.P.No. 19368 of 2022

directions were issued by the Hon'ble Supreme Court.

- i. *All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A IPC or Section 4 of the Dowry Prohibition Act, 1961, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years, whether with or without fine, is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41 Cr.P.C.;*
- ii. *All police officers be provided with a check list containing specified sub-clauses under Section 41(1) (b)(ii) Cr.P.C.*
- iii. *The police officer shall forward the check list duly filled and furnish the reasons and materials which*



WEB COPY



W.P.No.20148 of 2022
and W.M.P.No. 19368 of 2022

necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;

- iv. The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;*
- v. The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;*
- vi. Notice of appearance in terms of Section 41-A Cr.P.C. be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of police of the district for the*



W.P.No.20148 of 2022
and W.M.P.No. 19368 of 2022

WEB COPY

reasons to be recorded in writing.

The above ruling does not say that arrest of a person without issuing notice under Section 41-A of the Code of Criminal Procedure may amount to violation of human rights. As far as the present case is concerned, the petitioner has six previous cases registered against him and the offences are also quite serious in nature.

13. The other instance is the wrongful detention under Goondas Act. Was this detention a deliberate attempt to stifle his voice? The second respondent, as already discussed, was having a number of criminal cases against him. He was behind bars in two of the cases. Whether the police was right in bringing him under the ambit of Goondas Act is a difficult question to answer. Goondas Act in itself has in-built checks and balances. It has to be recommended by the police officials. But the District Magistrate/District Collector has to make a study as to whether the reasons are convincing for detention. An Advisory Committee goes again into the facts of the detention and give a



W.P.No.20148 of 2022
and W.M.P.No. 19368 of 2022

WEB COM

dispassionate view as to whether the detention is right or wrong. In this mechanism, there may be wrongful detentions. There may be mistake of facts as in any criminal case. The second respondent has had criminal complaints against him right from 2013. The decision to detain a person under Goondas Act is a subjective decision and such decisions are not to be scrutinized for merits by any court. The Advisory Committee has a say in it and is expected to resolve the same if any decision is apparently erroneous in the light of the available materials.

14. In view of the foregoing decision it is clear that no such conclusion on the alleged human rights violation can be arrived in the instant case based on the facts presented in this Court. The State Human Rights Commissions order's suffers from perversity.

15. In the result, the writ petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed. The orders dated 10.06.2022 of State Human Rights Commercial in SHRC Case No.4499/2019 is set aside.



WEB COPY



W.P.No.20148 of 2022
and W.M.P.No. 19368 of 2022

(V.M.V.,J.) (R.H.,J.)
02.02.2023

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
mtl/bga

To

- 1.The Registrar,
State Human Rights Commission,
No.143, PS.Kumarasamy Raja Salai,
Greenways Road, Chennai - 28.
- 2.State of Tamilnadu
Rep. by its Secretary, Home
(Police-2) Department,
St.George Fort, Chennai



WEB COPY



W.P.No.20148 of 2022
and W.M.P.No. 19368 of 2022

V.M.VELUMANI, J.
and
R. HEMALATHA, J.
mtl/bga

Pre-delivery Order in
W.P.No.20148 of 2022
& W.M.P. No.19368 of 2022

02.02.2023

(2/2)