



W.P.No.30000 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2023

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI
and

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

W.P.No.30000 of 2022

and

W.M.P.No.29415 of 2022

1.R.Balu

2.G.Arivazhagan

3.K.Baburaj

4.K.Singaravelan

.. Petitioners

Vs.

1.The State Human Rights Commission Tamil Nadu,
Rep. by its Registrar,
Thiruvarangam,
No.143, P.S.Kumarasamy Raja Salai,
Greenways Road,
Chennai – 600 028.

2.The Government of Tamil Nadu,
Rep. by its Secretary,
Home, Prohibition and Excise Department,
St. Fort George, Chennai.

3.Praveen Babu

4.Ashok

.. Respondents



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Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records on the file of the 1st respondent in SHRC case No. 22 + 326 of 2020 order dated 10.05.2021 and to quash the same and to consequently dismiss the complaint filed by the 3rd and 4th respondent.

For Petitioners : Mr.Naveenkumar Murthi
for Mr.S.Manivasagam

For R1 : Mr.A.Thiyagarajan

For R2 : Mr.P.Gurunathan
Additional Government Pleader

For RR 3 & 4 : Mr.M.T.Arunan
Assisted by
Mr.M.A.Arunesh

ORDER

(Order of the Court was delivered by R.HEMALATHA,J.)

The petitioner has come out with the present Writ Petition to quash the order dated 10.05.2021 passed in SHRC case Nos. 22 & 326 of 2020 and to dismiss the complaint filed by the respondents 3 & 4.

Briefly into the facts of the complaint of the respondents 3 & 4:



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2.The four petitioners are the Policemen attached to Mayiladuthurai Police Station. On 11.12.2019 at about 11.50 A.M., the 3rd respondent Praveen Babu, Son of Elangovan, a resident of Thathankudi, Mayiladuthurai District, who was working as a Manager in a Tyre Company, went to Mayiladuthurai Bus Stand to receive the tyres sent to him through Jahir Hussain Bus Service from Chidambaram. It is alleged that he had parked his two wheeler in front of a shop close to the Police Outpost and that it was objected to by the 1st petitioner R.Balu, who slapped him on his face causing his spectacles fall down and get broken. One Ashok (4th respondent), who filmed the incident in his Samsung Mobile Phone was verbally abused by the 1st petitioner. Both the respondents 3 & 4 were taken to Mayiladuthurai Police Station in an Auto, where they were allegedly beaten up brutally causing dislocation of shoulder joint to the 3rd respondent and fracture of left arm to the 4th respondent. An FIR in Crime No.533 of 2019 was registered against the respondents 3 & 4 by the Police for the alleged offences punishable under Sections 294(b), 352, 353, 506(ii), 427 of the Indian Penal Code and Section 3(i) of Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992. They were not also sent for medical treatment for the



injuries sustained by them and they were taken to the Magistrate in the night hours for remand. During remand, both the respondents 3 & 4 disclosed to the Magistrate that they were assaulted by the Police and the Magistrate in his Remand Order recorded the same. The Magistrate declined to remand both the respondents 3 & 4 for the offence under Section 3(i) of Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992, since the Police did not produce any evidence to prove the same. Thereafter, they were sent to Sub-Jail, Mayiladuthurai, where the Jailor sent both of them for medical treatment and they were treated as inpatients for four days and later were shifted to Government Hospital, Trichy. Once they were released on bail, they gave a complaint before the State Human Rights Commission, Tamil Nadu in SHRC case Nos. 22 of 2020 & 326 of 2020 respectively.

3. After considering the oral and documentary evidence adduced on both sides, the State Human Rights Commission, Tamil Nadu concluded that there is an element of Human Rights violation and recommended the following to the Government:

“27. In the result, this Commission recommends as

follows:-



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(i) The Government of Tamil Nadu shall pay a compensation of Rs.1,00,000/- (Rupees One Lakh only) each to the Complainants Praveenbabu and Ashok (Totally Rupees Two Lakhs only) within one month from the date of receipt of a copy of this Recommendation and the Government of Tamil Nadu may recover Rs.50,000/- each from the Respondents 1 to 4 respectively (50000 X 4 = 200000).

(ii) This Commission also recommends to initiate disciplinary action against the Respondents 1 to 4 as per the Rules.”

4.Now the present Writ Petition is filed challenging the said order dated 10.05.2021 in SHRC case Nos. 22 & 326 of 2020.

5.Heard Mr.Naveenkumar Murthi, learned counsel appearing for the petitioners, Mr.A.Thiyagarajan, learned counsel appearing for 1st respondent, Mr.P.Gurunathan, learned Additional Government Pleader appearing for 2nd respondent and Mr.M.T.Arunan, learned counsel appearing for respondents 3 & 4 and perused the entire materials on record.

6.Mr.Naveenkumar Murthi, learned counsel appearing for the petitioners would contend that there was no element of Human Rights



violation and that the 3rd respondent had breached the Traffic Rules by riding the motorcycle with two persons on the pillion and when they were intercepted, the 3rd respondent dropped the name of his relative, who is working in the Police Department. Thereafter, the respondents 3 & 4 assaulted the 1st petitioner and they also created ruckus, causing damage to the Police Outpost. The learned counsel drew the attention of this Court to the photograph taken on 12.11.2019 at 12:06:03 to substantiate his contention that the 3rd respondent created ruckus. His further contention is that all the allegations were made only against the 1st petitioner and that though there was an altercation between the other Policemen and the respondents 3 & 4, the State Human Rights Commission was wrong in giving a finding that there is a violation of Human Rights, when the FIR is pending for investigation. His further contention is that the learned Single Judge, who subsequently quashed the FIR in Crime No.533 of 2019 also relied on the decision of the State Human Rights Commission and thus put the cart before the horse.

6(a).The learned counsel appearing for the petitioners also relied on the following decision in support of his contentions:



(i) ***Jatt Ram Vs. Punjab State Human Rights Commission and***

another reported in ***ILR Punjab and Haryana 2005 (2) 502***, wherein it

has been held as follows:

“...

(38) A further perusal of sub clause (b) of section 12 would show that if some proceedings are pending before a Court, the Commission can intervene in those proceedings only with the approval of such court. It, thus, necessarily follows that when a Court of competent jurisdiction, either Civil or Criminal, is already seized of the matter, the Commission has no jurisdiction in the matter to initiate parallel proceedings or order a parallel investigation. This intention of the Legislature can be inferred from the fact that in case of pending proceedings, the Commission is required to intervene in the proceedings, only with the approval of such Court, where proceedings are pending. Obviously, this has been intended by the Legislature so as to avoid commencement of parallel proceedings. Even otherwise since the powers of the Commission are merely recommendatory in nature, therefore, necessary relief can only be sought by an aggrieved party, from a Court of competent jurisdiction.



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(39) *This Court had an occasion to examine powers and functions of the Commission in an earlier case titled Jai Singh versus Punjab State Human Rights Commission and another C.W.P 20075 of 2003, decided on 2nd April, 2005. Similar views, as expressed by us in the present judgment were also taken in the said judgment as well. Additionally, it was observed as follows:*

"It may also be relevant to notice here that the Commission is a creature of a Statute i.e. Protection of Human Right Act, 1993. It, therefore, cannot obviously clothe itself with such powers which have not been conferred upon it by the aforesaid Statute. Apparently powers of judicial review have not been conferred upon the Commission. Powers of holding parallel proceedings, where the matter is already pending before a competent Court (civil or criminal), have also not been envisaged by the Act. Under the provisions of the Act, the Commission has been merely constituted with a function to make recommendations to the appropriate Government, when any violation of human. rights by a public servant, is brought to its notice, after due investivation of the matter. As the language of section 18 itself



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suggests that the Commission has only power to make recommendations to the concerned Government or authority, for initiation of proceedings, or for initiation of such action as may be deemed fit. The word "recommendation" necessarily means "to Suggest." Such a suggestion cannot be treated to be a decision capable of execution or enforcement."

(40) The Supreme Court of India in the case of N.C. Dhoundial versus Union of India and Others (1) held as follows:

14. We cannot endorse that view of the Commission. The Commission which is a "unique expert body" is, no doubt, entrusted with a very important function of protecting human rights, but, it is needless to point out that the Commission has no unlimited jurisdiction nor does it exercise plenary powers in derogation of the statutory limitations. The Commission, which is the creature of statute, is bound by its provisions. Its duties and functions are defined and circumscribed by the Act. Of course, as any other statutory functionary, it undoubtedly has incidental or ancillary power to effectively exercise its jurisdiction in respect of the powers confided to it but the



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Commission should necessarily act within the parameters prescribed by the Act creating it and the confines of jurisdiction vested in it by the Act. The Commission is one of the fora which can redress the grievances arising out of violations of human rights. Even if it is not in a position to take up the enquiry and to afford redressal on account of certain statutory fetters or handicaps, the aggrieved persons are not without other remedies. The assumption underlying the observation in the concluding passage extracted above proceeds on an incorrect premise that the person wronged by violation of human rights would be left without remedy if the Commission does not take up the matter."

(ii) Reliance was also placed upon the decision in ***Ram Deo Chauhan Alias Raj Nath Chauhan Vs. Bani Kanta Das and others*** reported in ***(2010) 14 SCC 209***, wherein it was held that the National Human Rights Commission cannot intervene in a proceeding pending in a Court without its approval as it is assumed that the Court will remedy any case of violation of Human Rights.

7.Per contra, Mr.M.T.Arunan, learned counsel appearing for the respondents 3 & 4 would contend that both the respondents 3 & 4 were



innocent persons, who had gone to Mayiladuthurai Bus Stand for some personal work and that the Police had used force on them for no valid reason. It was also contended that the 1st petitioner took the respondents 3 & 4 to the Police Station, assaulted them and the respondents 3 & 4 sustained injuries and the Police foisted a false case and treated them badly without providing them any medical assistance. His specific contention is that the petitioners herein violated the Human Rights.

8.It is seen from the records that a single Judge of this Court by an order dated 28.06.2022 in Crl.O.P.Nos.18382 & 20382 of 2020 had quashed the FIR in Crime No.533 of 2019 of Mayiladuthurai Police Station. In the said Crl.O.P., the 1st petitioner Balu filed an affidavit, which reads as under:

“E) Moreover, the CCTV footage (i.e.,) Ex.R4 clearly shows that both the 3rd and 4th respondent came in an motorcycle, where the 3rd respondent is rider of the motorcycle and the 4th respondent is the pillion rider in the motorcycle. Whiles in their very first averment raised in their complaint states as if only the 3rd respondent was riding the motorcycle and the 4th respondent was waiting for a bus in the bus



stand while the incident took place. This itself would clearly shows that the complaint filed as against these petitioners are nothing but a fiction created by the 3rd and 4th respondent.”

8(a).Thus, it is clear that there was no “triples” as claimed by the Police. Only two of them were on the two wheeler. When there was no Traffic violation, it is intriguing as to why such an allegation was made against the respondents 3 & 4 by the Police. *Prima facie* it is clear that these respondents were roughed up for no specific reason and the case which was foisted on them had already failed in CrI.O.P.Nos.18382 & 20382 of 2020 by the order of the learned Single Judge of this Court dated 28.06.2022. The nature of injuries sustained by the respondents 3 & 4 are grievous in nature. Both of them were not criminals or habitual offenders and the Police failed to substantiate their version that respondents 3 & 4 had caused damage to the public property. In fact, this theory was nipped in the bud by the Magistrate even at the time of remand of the respondents 3 & 4. There is a specific mention in the remand order that the Police has not substantiated that both the respondents 3 & 4 damaged the public property. We are also convinced that the 1st petitioner got infuriated when the 4th respondent attempted to



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shoot a video of the alleged attack. The theory of the Police is that both the victims have fled away from the scene of occurrence after slapping the 1st petitioner and that they were nabbed by the other Police at Kannara Street near Mukkuttu, Mayiladuthurai. The arrest card was not produced to prove the same. Similarly, the contention that the injuries sustained by the respondents 3 & 4 were due to falling down near the Police Outpost in the Bus Stand, is also doubtful, as this is not even mentioned in the remand report. In fact, both of them had complained about the physical attack on them by the Police to the Magistrate and the Magistrate had also recorded the same in the remand order. It is quite unfortunate that despite causing serious injuries to both the respondents 3 & 4, the Police had not referred them to any Hospital for medical treatment. They were actually referred to the Hospital only by the Jailor.

8(b).The Commission on its part had called for a report from the Superintendent of Police, Mayiladuthurai. Accordingly, the Superintendent of Police in his report has stated that there is no Police excess as far as the present case is concerned. However, the State Human Rights Commission was not convinced with the report of the Superintendent of Police.



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8(c).The learned Single Judge of this Court had quashed the FIR not merely based on the findings of the State Human Rights Commission. A perusal of the entire order shows that the learned Single Judge had passed a detailed order based on the merits of the case. Of course, there is a reference about the findings of the State Human Rights Commission in the order passed by the learned Single Judge. However, that cannot be the sole reason to hold that the learned Single Judge had mainly relied on the State Human Rights Commission and quashed the FIR. The State Human Rights Commission had, after analysing the evidence adduced on both sides, come to a definite conclusion that there is an element of Human Rights violation. In the peculiar facts and circumstances of the present case, the decisions relied on by the learned counsel appearing for the petitioners would not apply, because the State Human Rights Commission cannot reject a complaint merely because FIR is pending for investigation, especially when it comes to its notice that there is an element of Human Rights violation.

8(d).The learned counsel appearing for the petitioners in his typed set of papers has filed four photographs. Only in two of the photographs,



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the time and dates are mentioned. In the photographs which are relied on by the learned counsel appearing for the petitioners to show that the respondents 3 & 4 damaged the public property in the Police Outpost, there is no time and date. The entire CCTV footage was not also produced either before the State Human Rights Commission, Tamil Nadu or before this Court.

9. We do not find any reason to interfere with the orders passed by the State Human Rights Commission, Tamil Nadu and accordingly, the Writ Petition is dismissed as devoid of merits. Consequently, the connected Miscellaneous Petition is closed. No costs.

(V.M.V., J) (R.H., J)
08.02.2023

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

To

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