



W.P.Nos.5515 & 5516 of 2020'

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on 29.08.2023

Order delivered on 30.10.2023

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU
AND
THE HONOURABLE Mrs.JUSTICE N.MALA

W.P.Nos.5515 & 5516 of 2020
and
W.M.P.Nos.6447 & 6450 of 2020

Ramalingam
S/o Ramanujam

.... Petitioner in W.P.No.5515/2020

B.Kumar,
Inspector of Police,
Anathanapatty Police Station,
Salem District

.... Petitioner in W.P.No.5516/2020

vs

1. The State of Tamilnadu,
rep. by the Principal Secretary to Government,
Home Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.

2. The Special Secretary to Government,
Public (HR) Department, ,Secretariat,
Chennai - 600 009.



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3. The Registrar,
State Human Rights Commission,
Greenways Road,
Chennai - 600 028.

4. D.Jayaprakash Narayanan
S/o Damodaran

...Respondents in both the W.Ps.

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records relating to the recommendations made in SHRC Case No.11609 of 2008 dated 16.09.2019 on the file of the 3rd respondent and to quash the same.

For Petitioners : Mr.S.Sheik Ismail

For Respondents : Mr.P.Gurunathan,
Additional Government Pleader for R1 & R2
Mr.C.Jayaprakash,
Standing Counsel for R3
Mr.S.Sathiachandran for R4

COMMON ORDER

(Order of the Court was made by J.NISHA BANU, J.,)

These writ petitions have been filed challenging the order passed by the 3rd respondent/State Human Rights Commission, by which, the Government was directed to pay a sum of Rs.5,00,000/- to the complainant D.Jayaprakash Narayanan/4th respondent herein, within one month from the date of receipt of copy of the recommendation and the Government was further directed to



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recover Rs.1,00,000/- from the petitioner in W.P.No.5515/2020 and Rs.2,00,000/- each from the petitioner in W.P.No.5516/2020 and the 3rd respondent therein/ one Mani, Inspector of Police respectively. The complaint against the 4th to 6th respondents therein/ other police officials was dismissed.

2. (i) The case of the petitioners is that one Dhasarathan, brother of the 4th respondent herein/Jayaprakash Narayanan, drove the two wheeler in a rash and negligent manner and crossed the vehicle of the petitioner/Ramalingam as if dashing against his vehicle. So Ramalingam stopped the two wheeler of Dhasarathan and questioned him. Immediately, Dhasarathan called the 4th respondent through cell phone, who arrived at the scene of occurrence along with another person and joined with his brother Dhasarathan and used filthy language against the petitioner/Ramalingam and threatened him saying that they were the grandsons of one Loganathan, who killed the father of MLA Pushparaj and the 4th respondent assaulted the petitioner/Ramalingam, fisting with his left hand on the right eyebrow of Ramalingam. Due to the said attack, the petitioner/Ramalingam, fell down and all the three persons attempted to murder him. At the time of fisting, the 4th



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respondent sustained fracture in his left hand small finger. In this regard, a case was registered against the 4th respondent, his brother and one other person in Villupuram West Police Station in Cr.No.667/2008 under section 332, 294(b), 307 IPC on 23.11.2008. The 4th respondent was arrested and remanded on 24.11.2008. A complaint was also preferred by the 4th respondent against these petitioners in West Police Station in Cr.No.70/2009 under sections 147, 325, 323, 294(b) of IPC r/w 3(1)(x) of SC/ST Act.

(ii) The main allegations against these petitioners is that the petitioners misused their police power and brutally attacked the 4th respondent and detained him in judicial custody for 12 days and further, as per letter addressed to the Municipality, the 4th respondent was also suspended from service, which caused him mental torture, apart from physical torture. Thus, the petitioners have violated the human rights of the 4th respondent. Therefore, the State Human Rights Commission has passed impugned order against the petitioners along with one Mani. Hence, the present writ petitions with the relief as stated supra.

3. (i) Learned counsel for the petitioners would submit that the complaint given by the 4th respondent, which was registered in



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Cr.No.70/2009 for the offence under Sections 147, 323, 325, 294 of IPC and Section 3(1)(x) of SC/ST Act, 1989 in Villipuram West Police Station was thoroughly investigated and treated as 'Mistake of Fact', after getting approval from SC/ST Monitoring Committee, headed by the District Collector, Villupuram. The petitions filed by the 4th respondent before this Court in CrI.O.P.No.5887/2015 under section 482 Cr.P.C. to direct the DIG of Police, CB-CID, Chennai to take over further investigation in Cr.No.70/2009 and CrI.O.P.No.4505 of 2016 to set aside the referred charge sheet in Cr.No70/2009 and to direct the DIG of Police, CB-CID, Chennai to conduct fresh investigation and to file a final report, were dismissed by this Court on 03.11.2020 as devoid of merits. Initially, HC Ramalingam, /petitioner in W.P.No.5515/2020 approached B.Kumar/petitioner in W.P.No.5516/2020, who identified and secured the 4th respondent who assaulted HC Ramalingam and took him to Town Police Station on 23.11.2008. The 4th respondent Jayaprakash Narayanan was handed over by the petitioner /B.Kumar in the West Police Station. Few police personnel of West Police Station may have assaulted him which was not known to the petitioners herein. The 4th respondent was born and living in the west police station limit and working in town police station limit and he knows the identity of police persons who



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assaulted him but he wantonly did not reveal the identity and name of any police persons who assaulted him in the Town and West Police Stations. He has falsely stated that all the injuries sustained by him were caused by the petitioners herein.

(ii) Learned counsel would further submit that on the complaint given by the 4th respondent before the State Human Rights Commission (SHRC), an enquiry was conducted and a report was submitted before the Commission. But the copies of the enquiry report were not furnished to the petitioners herein at the time of SHRC trial to challenge and to contradict the enquiry report. The 4th respondent's wife and his brother Dhasarathan were enquired only as hearsay witnesses. No other eye witnesses were enquired. SHRC neglects the 4th respondent's statement in the complaint that he was assaulted by several police persons in both Town and West Police Stations. Further, the SHRC accepted the false complaint and the false statement of the 4th respondent but not considered the statement of the petitioner/Ramalingam, who was assaulted by the 4th respondent, his brother and one other person. Finally, the State Human Rights Commission has passed recommendation against the petitioners.

(iii) Learned counsel would further submit that the criminal action



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against the petitioners on the complaint given by the 4th respondent in Cr.No.70/2009 was registered and investigated and treated as 'mistake of fact and the Criminal Original Petitions in CrI.O.P.Nos.5887/2015 and 4505/206 were dismissed by this Court as devoid of merits Therefore, this Court may consider and set off and cancel the SHRC order of recommendation, directing to take criminal action against the petitioners. The SHRC order, recommending, not to grant any promotion to the petitioner, B.Kumar will spoil his whole career and reputation which he gained in the department, though he was granted awards like 'Uthamar Gandhi' medal in the year 2008, 'CM Best investigation' medal in the year 2012,' Best Police station in State' award in the year 2018 etc. The complaint was not genuine and it is false and exaggerated one, wantonly given against the petitioners by the 4th respondent as the petitioner/ Ramalingam gave complaint against him and the petitioner /B.Kumar secured and produced him before the Police Station. The impugned order suffers from patent illegality without going into the submissions made by the petitioners and it suffers from excessive recommendations. The impugned order is only recommendatory and not mandatory. Hence, the learned counsel would pray to set off and cancel all the recommendations against the petitioners ordered by the SHRC in SHRC case No.11609/2008.



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(iv) In support of the above contentions, learned counsel for the petitioners relied on the judgment in the case of *P.P.M.Thangaiah Nadar Firm v. The Government of Tamil Nadu* reported in 2006(5) CTC 97, wherein it is held that the conclusions of a Commission of Inquiry are not admissible in a court of law, in criminal case or even in civil case and such conclusions are merely advisory in nature.

4. (i) Per contra, the learned counsel appearing for the 4th respondent would submit that it is settled law that the jurisdiction of this Court under Article 226 of the Constitution of India exercising the power of Judicial Review is restricted only to look into any violation of law, principles of natural justice or perversity in the order assailed. However, the present writ petitions do not make out a case for judicial review of the order passed by SHRC. It is trite law that the writ jurisdiction of this Court cannot be converted into one of Appellate Forum. The petitioners have not claimed that the impugned order of SHRC was passed denying them due opportunity. The petitioners have not raised any ground alleging perversity in the order of the SHRC by pointing out even a single instance of such perversity to assail the impugned order. The findings on facts arrived at by the SHRC is to be



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construed as final and the petitioners have no ground whatsoever to assail the impugned order.

(ii) Learned counsel for the 4th respondent would further submit that in the case of *Abdul Sathar vs. The Principal Secretary to Government* reported in 2021(3) MLJ 321, the Full Bench of this Court has authoritatively held that the orders/recommendations made by the State Human Rights Commissioner are mandatory in nature and binding. The principal contention of the petitioners has been effectively negated by the decision of the Full Bench and the writ petitions are liable to be dismissed. The order of SHRC is only of civil consequences, passed after affording due and reasonable opportunity to the petitioners. As regards the criminal proceedings, the SHRC itself has left it open and had not dealt with it taking into account the pendency of criminal cases by both parties. While doing so, the SHRC has confined itself only to the extent of examining the matter as to whether any human rights violation had taken place and after carefully analysing the evidence on records, the SHRC has rightly passed the impugned order as its duty to protect human rights.

(iii) In support of his contention, the learned counsel relied on the judgment of this Court in the case of *Muruganantham vs. State Human Rights*



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Commissioner (CDJ 2011 MHC 700) wherein it is categorically held that when there is no perversity in the SHRC's order, interference under Article 226 of the Constitution of India is not warranted. He also relied on the judgment of this Court in the case of *T.Vijayakumar v. Madhavi & others* reported in *CDJ 2010 MHC 7455*, wherein it is held that when the Commission's recommendations were accepted by the State, the natural corollary is that the concerned delinquent Government servant has to abide by the Government order. Therefore, he would pray to dismiss the above writ petitions.

5. We have considered the submissions made on either side and perused the materials available on records.

6. Admittedly, the 4th respondent was arrested and remanded to judicial custody on 24.11.2008 and thereafter, released on bail only on 04.12.2008. Though the complaint was preferred by the 4th respondent against the petitioners and other policemen, the same was received by the 3rd respondent and treated the same as CSR.No.222/2008 and only nearly after 3 months, the complaint was registered on 13.02.2009 in Cr.No.70/2009 for the



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offences under sections 147, 325, 323, 294(b) of IPC r/w Section 3(1)(x) of SC/ST Act and the same was also referred to as 'mistake of fact'. The 4th respondent, who was working as Overseer in Villupuram Municipality was suspended from service on 26.11.2008. He is a B.E. graduate and has not involved in serious offences like murder, robbery, decoity etc. He is also not a habitual offender. He was arrested when he was in his residence at about 8.30 p.m. It is alleged that the petitioner Kumar along with 4 policemen went to the house of the 4th respondent and brutally attacked him.

7. It is pertinent to point out that the findings given by the Human Rights Commission are based on appreciation of oral and documentary evidence which establishes the facts of arresting the 4th respondent for the alleged offence under sections 332, 294(b), 307 IPC registered in Crime No.667/2008 on 23.11.2008 and releasing him on bail on 04.12.2008. It is seen from the records that the incident took place on 23.11.2008 at 2.00 p.m. between the 4th respondent and the petitioner/ Ramalingam. The petitioner/ Ramalingam had lodged a complaint to Mani, Inspector of Police, very belatedly at 11.00 p.m. on the same day. However, it is stated in the proof affidavit filed by the petitioner/ Kumar that the petitioner /Ramalingam, after



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taking treatment in a private hospital, told him about the incident and immediately, he along with Ramalingam and other police personnel went in search of the 4th respondent at K.K.Road and Periya Colony at Villupuram and only thereafter, the petitioner/ Ramalingam lodged a complaint at 11.00 p.m. on 23.11.2008. As there is delay in filing the complaint against the 4th respondent, it creates suspicion about the registration of the said case. Even in the cross examination, the petitioner Kumar admitted that petitioner/Ramalingam, came to the police station and orally informed about the incident that took place at 2.00 p.m near V.V.A building and immediately, he orally informed it to Inspector of Police and DSP and they instructed the petitioner/Ramalingam to lodge a complaint in Villupuram West Police Station.

8. It is seen from the records that when the 4th respondent was taken to Central Prison, Cuddalore, the Jailor refused to admit him because there were injuries all over his body. The Police pacified him and admitted in the jail hospital as inpatient and he was given treatment. The main allegation of the 4th respondent is that he was taken from his house by the petitioners and other policemen and was brutally attacked by them. The photographs marked



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as Exs.P3 and P16 categorically establish the fact that 4th respondent sustained injuries on his body. Further, the said photographs were taken by press persons which would go to show that the 4th respondent was assaulted by the petitioners and other policemen. The medical records maintained in the Jail Hospital also show that there was contusion on his right shoulder, left elbow, ring finger, little finger, left foot, ankle, buttocks, back and on the nose. Unless the 4th respondent was beaten in a brutal manner, no such injuries would have been sustained by him. The mere statement by the police personnel that he fell down at the time of incident and sustained such injuries, cannot be countenanced. Further, no arrest can be made in a routine manner on the allegation of commission of an offence against a person. Further, denying a person of his liberty is a serious matter. It is not the case of the petitioners that unless and until the arrest was made, the 4th respondent will abscond or tamper the witnesses or hamper the investigation. No arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bonafides of a complaint. The explanation offered by the police officials as to the arrest of the 4th respondent is not satisfactory.

9. It is pertinent to point out that regarding the power of the



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Commission to grant compensation, the Supreme Court in its decision reported in *National Human Rights Commission Vs. State of Arunachal Pradesh* and another reported in *AIR 1996 SC 1234: 1996 1 SCC 742* emphasised the duty of the State in protecting the life and liberty of human being. It is also held that no person can be deprived of his life or personal liberty except according to procedure established by law. The power to recover the amount from the delinquent Government servant after the State compensates a victim is also referred to in the judgment in *D.K.Basu v. State of West Bengal* reported in *1997(1) SCC 416* wherein it is held that "There is indeed no express provision in the Constitution of India for grant of compensation for violation of fundamental right to live, nonetheless, this Court has judicially evolved a right to compensation in cases of established unconstitutional deprivation of personal liberty or life".

10. From the above discussion, it is clear that there is Human Rights violation made against the 4th respondent by the petitioners along with other police officials. The petitioners cannot be said to be aggrieved by the impugned order passed by the State Human Rights Commission, when they had been afforded full opportunity to place their case before the said



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Commission, which is a statutory body mandated to protect the human rights of its citizens. We are unable to see any illegality or infirmity in the findings of the State Human Rights Commission, warranting interference under Article 226 of the Constitution of India. Accordingly, both the Writ Petitions stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

(J.N.B., J.) (N.M., J.)

30.10.2023

vsi

Index : Yes / No

Internet : Yes / No

Neutral citation : Yes / No

To

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J. NISHA BANU, J.
and
N.MALA, J.

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Pre-delivery order in

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