



W.A.(MD)No.1211 of 2013 & W.P.(MD)No.22137 of 2018

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 19.07.2023

PRONOUNCED ON: **29.09.2023**

CORAM:

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**
AND
THE HONOURABLE **MR.JUSTICE R.VIJAYAKUMAR**

W.A.(MD)No.1211 of 2013 & W.P.(MD)No.22137 of 2018
and
W.M.P.(MD)No.20067 of 2018

W.A.(MD)No.1211 of 2013:-

M.Silambarasan

...Appellant

/Vs./

- 1.The State of Tamilnadu,
Rep. by its Secretary to Government,
Home (Police) Department,
Secretariat,
Chennai.
- 2.The Director General of Police,
Kamarajar Salai, Chennai.
- 3.The Commissioner of Police,
Madurai City, Madurai.



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4.The Superintendent of Police,
Madurai District,
Madurai.

5.The Sub Inspector of Police,
Koodalpudur Police Station,
Koodalpudur,
Madurai.

6.Prabhu,
Head Constable (T.P.1776),
Koodalpudur Police Station,
Madurai.

7.Rajesh,
Head Constable (T.P.1870),
Koodalpudur Police Station,
Madurai.

...Respondents

PRAYER:- Writ Appeal - filed under Clause XV of Letters Patent Act, to set aside the order dated 06.06.2013 passed in W.P.(MD)No.903 of 2013 and allow the writ petition.

For Appellant : Mr.S.Balamurugan

For Respondents : Mr.T.Amjad Khan

Government Advocate (R1 to R5)

Mr.D.Sivaraman (R6 & R7)



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W.P.(MD)No.22137 of 2018:-

1.Prabhu,
Grade I Police Constable (T.P.1776),
Pudur Police Station,
Madurai – 625 007.

2.Rajesh Kannan,
Grade I Police Constable (T.P.1870),
Pudur Police Station,
Madurai – 625 007.

/Vs./

1.The State Human Rights Commission – Tamil Nadu,
143, P.S. Kumarasamy Raja Salai,
Greenways Road,
Chennai – 600 028.
Rep, by its Registrar (Law).

2.The Government of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Home, Prohibition Excise Department,
Secretariat,
Chennai – 600 009.

3.M.Silambarasan

...Respondents



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PRAYER:- Writ Petition - filed under Article 226 of the Constitution of India, Writ of Certiorari, calling for records relating to the impugned order passed by the first respondent herein in SHRC No.10644 of 2012 dated 05.06.2018, quash the same.

For Petitioners : Mr.D.Sivaraman
for Mr.R.Suriyanarayanan
For Respondents : No appearance (R1)
Mr.T.Amjad Khan
Government Advocate (R2)
Mr.S.Balamurugan (R3)

COMMON JUDGMENT

(Judgment of the Court was made by **DR.ANITA SUMANTH, J.**)

A common order is passed in the writ appeal and connected writ petition, insofar as the issues that arise for consideration are intertwined.



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2. The writ appeal is filed challenging an order passed in WP(MD)No.903 of 2013 dated 06.06.2013, wherein the prayer was for a mandamus directing the respondents, the State, Director General of Police, Commissioner of Police, Superintendent of Police and Sub-Inspector of Police (R1 to R5 respectively) and two named Head Constables (R6 and R7), to award adequate compensation quantified at Rs.5,00,000/- to the petitioner towards his illegal detention and injuries suffered in the hands of R6 and R7.

3. A consequential direction was also sought for initiation of departmental action against the police officials, who had inflicted the detention and injuries, including R6 and R7. The writ petition had come to be dismissed, as against which the present writ appeal has been filed.

4. The present writ petition in WP(MD)No.22137 of 2018 has been filed by R6 and R7 in writ appeal (henceforth referred to as R6 and R7) challenging an order passed by the State Human Rights Commission



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(SHRC / Commission) dated 05.06.2018, wherein the Commission had directed the Government of Tamil Nadu to pay compensation of Rs. 1,00,000/- to the appellant in writ appeal, recover the same from R6 and R7 and recommended initiation of departmental action as against R6 and R7.

5. For ease of reference and clarity, the parties are hereinafter referred to as follows; the appellant in writ appeal referred to as the appellant; The state / R1 referred to either as State or R1; The DGP referred to as DGP/R2; The Commissioner of Police referred to as CP /R3; The Superintendent of Police referred to as SP/R4; The Sub-Inspector of Police referred to as SIP/R5; Petitioners in writ petition being Head Constables in Pudur Police Station per the array in writ appeal, being R6 & R7. The background to both the matters is common and is as elucidated in the paragraphs to follow.



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6. The contents of the writ affidavit filed by the appellant revolve around the events of 08.10.2012. The appellant alleges that R6 and R7 had come to Kudal Pudur area where he was residing, at about 12.30 a.m. along with other police officials as part of a search of persons accused to have been involved with dacoity in Muthoot Finance Company, Arapalayam. They had barged into his house and beaten him and his friend, Vimal.

7. They snatched money from their pockets and left. R6 and R7 also obtained the keys to search of his properties in the vicinity. Both the appellant and his friend were taken to the police station and detained there.

8. The appellant had been singled out and beaten very badly, particularly on his hands. Thereafter, they went again to his house on 09.10.2012 and under guise of further enquiry, broke open the bureau taking away cash and gold. While in the police station, it was only at the



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instance of the Deputy Commissioner of Police (Crime) that the alleged torture stopped.

9. The appellant was treated in the Vadamalaiyan hospital, where a scan of the hands revealed that his right thumb was fractured. A complaint was made before the authorities and since it was not registered (later registered in Crime No.464 of 2012). A Criminal Original Petition was filed. The matter was taken up for enquiry thereafter and has traveled in appeal. We will, in the later portion of this judgment, refer to the trajectory that that enquiry has taken.

10. A writ petition came to filed by the Appellant seeking mandamus for award of compensation. A status report had been filed before the writ Court by the Inspector of Police setting out the details of the enquiry conducted. The enquiry revealed that the allegations of the appellant that there had been some animosity between the appellant and R6 even prior to this specific incident.



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11. It was the appellant's say that the R6 and R7 had been associating with sex workers and there had been a few heated exchanges between them in regard to the aforesaid association. This had irked R6 and R7 who were looking for an opportunity to implicate the Appellant thereafter, even on false charges.

12. Upon hearing the rival contentions, the writ petition came to be dismissed on two grounds. Firstly, no documents had been filed before the Writ Court to establish that the appellant had suffered a fracture or, much less, had been tortured. Medical records produced before the Court only indicated that he had been admitted as an out-patient and only receipts for consultation fee had been filed. The scan report was also not filed.

13. The second ground was that the appellant had not disclosed in the writ affidavit that he had approached the Commission for compensation on the basis of the same reasons for which the writ petition



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had been filed. Lambasting the appellant, the writ petition was dismissed holding it to be an abuse of process of law as held by the Hon'ble Apex Court in *Udyami Evam Khadi Gramodyog Welfare Sanstha and another vs. State of Uttar Pradesh and others* (2008 (1) SCC 560).

14. The order of the Writ Court is dated 06.06.2013. In the meanwhile, the Commission has passed an order considering the petition filed by the appellant seeking compensation. The Commission, in order dated 05.06.2018 has decided two points that arose for consideration. The first is whether R6 & R7 had violated the human rights of the appellant and the second, what reliefs, if any, was the appellant entitled to.

15. The appellant was examined as P.W.1. He sought to establish motives relying upon certain events alleged to have taken place when he was at his house in No.M1/73, Koodalpudur Housing Board Colony. According to him, R6 resided in the vicinity of his house and



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was in the habit of bringing sex workers to his house. This led to a heated exchange between the two of them leading to a clear motive on the part of R6. R6 & R7 had not produced any witnesses before the Commission and an adverse inference was thus drawn as against them.

16. The appellant had filed documents under various exhibits, being P1 to P4, medical bill dated 14.10.2012, prescription dated 11.10.2012 and three more, and reports of two x-rays taken by the appellant in Vadamalaiyan Hospital, South Gate, Madurai. The Commission specifically refers at para 14 (internal page 9 of the order) that the X-rays revealed fracture of both hands of the appellant.

17. The Commission thus concludes that the treatment for the fracture stood established. The objection of R6 and R7 were to the effect that the dates of treatment were two days after the incident in the police station and that the appellant had selectively taken treatment in a hospital that came within the jurisdiction of his father, who was working as Sub-Inspector of Police in that Station.



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18. However, this objection was rejected by the Commission on the ground that the alleged influence exerted by the father had not been proved. Neither had the documents been disproved in any way. As regards the delay of two days in approaching the hospital, the appellant had withstood cross-examination stating that he had taken indigenous treatment for two days and went to the hospital only thereafter. The Commission accepted this explanation.

19. That apart, the Commission finds convergence of the parties on the position that the Assistant Commissioner of Police (ACP) (law and order) along with police authorities including R6 and R7, had visited the appellant's house at 11.30 p.m., when the appellant and Vimal were hiding inside a Tata Indica Car that had been locked and parked outside the house, and that the appellant and Vimal had been left free on 09.10.2012 upon finding that they had not been connected with the dacoity of Muthoot Finance. In light of this admission, the Commission

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comes to the categoric conclusion that between 11 p.m., on 08.12.2012 and 09.12.2012, the appellant was illegally detained and beaten up.

20. As regards the enquiry conducted, that is, the visit of the police authorities to the appellant's residence and subsequent events, barring the physical intimidation and torture, it is nobody's case that such enquiry was unwarranted. Admittedly there had been a dacoity in Muthoot Finance and a Maruthi Van with registration number commencing TN – 67 had been seen in the vicinity.

21. It was not unreasonable that the appellant, who also owned a similar car with registration number also commencing TN – 67 should be enquired as a suspect. The car had been spotted in the vicinity of Muthoot Finance by an eye-witness, the owner of Phoenix Automobiles, one Shyam.



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22. The appellant had, admittedly been let off once the police had satisfied themselves that he was not guilty. We are of the view that retention of the appellant in the station cannot be faulted and cannot be equated to illegal detention. No materials have been produced before us, and neither is it the case of the appellant that the procedures required to be followed in matter of conduct of enquiry were not followed by the police, barring of course, the alleged torture.

23. The Commission considered the oral and documentary evidence produced by the appellant, the fact that no witnesses had been produced by R6 and R7, who themselves had not chosen to enter the witness box, the previous animosity between the appellant and R6 and, importantly, the medical records, and was hence persuaded to conclude that the appellant was entitled to compensation that was fixed at a sum of Rs.1,00,000/-, to be paid by the State and recovered equally from R6 and R7.



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24. The fact is that R6 and R7 had not entered the witness box and thus did not establish their version of events. That apart, the medical records produced establish unambiguously that the appellant had suffered injury. Those medical records have not been produced before the Writ Court and it is hence that the Court has rendered findings adverse to the appellant on the question of injury.

25. The Writ Court has proceeded more on the ground of suppression of relevant material being the complaint filed before the Commission, and this is an admitted fact. Having sought an equitable remedy before this Court, it was for the appellant to have come to Court with clean hands making a full disclosure of all facts, including that he had approached the Commission as well, seeking compensation.

26. As regards the fact that the appellant was in the Car with his friend Vimal, before us, the explanation tendered is that they had switched on the air conditioner in the car, as there was no current in the



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house. Infact, in the affidavit filed in support of the writ petition, the appellant has proceeded on the basis that the appellant was inside the house with Vimal and that R6 and R7 had broken into the house. To this extent, writ affidavit dated January, 2013 contains a false narration of events. The petitioner, not having come to the Court with clean hands and infact, seen to have misrepresented facts, is certainly not entitled to equitable relief. For these reasons, we fully concur with the order of the writ Court in dismissing the writ petition.

27. R6 and R7 have, in the course of arguments drawn attention to the report of the enquiry officer dated 26.11.2012. In the course of enquiry, the submission of R6 was that, while the appellant was in the police station, Inspector of C1 Police Station, one Sangu had come to the Station and had also questioned the appellant, raining a few blows upon him in the process. This has been recorded by the Enquiry Officer at internal page 9 of the enquiry report.



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28. However, in conclusion, the enquiry officer found that it was R6 and R7, who had caused injury to the appellant. When a query was posed as to why this aspect of the matter, the fact that Sangu had beaten the appellant, was not emphasized by R6 and R7 in departmental appeal, there is a vague submission that they had been advised / instructed by their superiors not to precipitate the matter any further.

29. Infact, even in the writ affidavit there is no reference to any other police officials having manhandled the appellant. It has been the specific case of the appellant that R6 was resident in the same locality as him. He has alleged that while he and his friends were playing cricket in the neighbourhood, R6 had warned him not to play there, as it would cause a disturbance in that area. It is further the appellant's allegation that R6 had intimidated the appellant, asking to stay away from the area citing his position as a police officer.



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30. When the appellant conveyed to him that his father was also a Sub Inspector of Police, R6 is stated to have been slapped him and issued more threats. This had led to the intervention of neighbours, one of whom is named in the FIR, who advised R6 not to cause a furore. Subsequently, the appellant would allege that he saw R6 again, and R6 had had made a threat in his direction referring to the earlier incident.

31. The medical records produced before the Commission stand testimony to the fact that the appellant has indeed being beaten and the bones in his hands fractured. In light of this uncontraverted medical evidence, we see no necessity to intervene in the order of the Commission.

32. Punishment of postponement of increment for a period of one year without cumulative effect was imposed on R6 & R7 13.01.2014, which was challenged in WP(MD)No.1466 of 2014 and by order dated 29.01.2014, this Court set aside the order directing the Commissioner of



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Police to consider the appeal filed by the petitioner afresh and pass appropriate orders within a timeframe that was fixed. Pursuant thereof, enquiry was conducted and a report of the investigating officer dated 21.03.2014 was filed finding them guilty.

33. An appeal was filed before the Commissioner of Police, which came to be decided on 21.04.2014, the officer giving R6 and R7 the benefit of doubt and modifying the punishment to a deferred blackmark for three months from date of the original order ie., 13.01.2014. That order came to be challenged in WP(MD)No.10315 of 2014 wherein this Court remitted the matter to the file of the Commissioner of Police yet again for passing orders afresh.

34. We are unaware as to further proceedings in this regard. The trajectory of events indicates that R6 and R7 were found guilty consistently by their own superiors. This would by itself justify the order of the Commission.



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35. In light of the detailed discussion as above, we see no necessity to intervene in the orders impugned before us, order of the Writ Court dated 06.06.2013 and order passed by the Commission dated 05.06.2018 and confirm the same. Both the Writ Appeal and Writ Petition are dismissed.

[A.S.M.J.] & [R.V.J.]
29.09.2023

NCC :Yes/No
Index :Yes/No
Internet :Yes
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TO:

- 1.The Secretary to Government,
Home (Police) Department,
Secretariat,
Chennai.
- 2.The Director General of Police,
Kamarajar Salai,
Chennai.
- 3.The Commissioner of Police,
Madurai City, Madurai.
- 4.The Superintendent of Police,
Madurai District,
Madurai.
- 5.The Sub Inspector of Police,
Koodalpudur Police Station,
Koodalpudur,
Madurai.
- 6.The Principal Secretary to Government,
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Chennai – 600 009.



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DR.ANITA SUMANTH, J.
AND
R.VIJAYAKUMAR, J.

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Pre-delivery Common Judgment made in
W.A.(MD)No.1211 of 2013 &
W.P.(MD)No.22137 of 2018

Dated:
29.09.2023