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W.P.No.2324 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2024

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **K.RAJASEKAR**

W.P.No.2324 of 2020

P.Jawahar
S/o.Mr.Peter Papu

... Petitioner

vs.

1. The State Human Rights Commission, Tamil Nadu
Rep. By its Secretary
Thiruvaramangam Maaligai
Greenways Road
Raja Annamaipuram
Chennai – 600 028

2. Tmt.Shobana Kumar
W/o.Dr.P.Vijayakumar

3. The Secretary to Govt.
Home Department
Secretariat
Chennai – 600 009

... Respondents

Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Certiorari to call for the entire records on the file
of the 1st respondent herein relating to the 1st respondent's impugned order

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passed in S.H.R.C No.3606 of 2010 dated 02.04.2018 and quash the same as illegal.

For Petitioner : Mr.B.Ganesha Moorthy
For Respondents : Mr.S.Wilson for R1
Mr.R.Sagadevan for R2
Mr.V.Ravi
Special Government Pleader for R3

ORDER

[Order of the Court was made by **K.RAJASEKAR, J.,**]

This writ petition has been filed challenging the order passed by the State Human Rights Commission in S.H.R.C.No.3606 of 2010 dated 02.04.2018.

2. Brief facts leading to filing of this writ petition are as follows:

A complaint dated 26.04.2010 was preferred by the second respondent herein before the State Human Rights Commission, wherein she has stated that a criminal case was registered on the file of Mylapore Police Station against the second respondent's husband, namely Dr.Vijayakumar, who was running Ayurveda Vaidyasalai at Mylapore on the allegation that



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the treatment given by him to one Rajammal was unsuccessful and apart from that, several complaints were received regarding false promise given by Dr.Vijayakumar. Subsequently, her husband was detained under Tamil Nadu Act 14/1982 vide order dated 17.09.2009 passed by the Commissioner of Police, Chennai City and was confined at Central Prison at Puzhal. The Complainant's elder son and daughter-in-law, who are qualified practitioners came forward to run the hospital which was earlier run by the husband of the complainant but they were not permitted to run the hospital by the Inspector of Police (Crime), Mylapore Police Station, namely Mr.Raghupathy. Subsequently, they were also implicated in the criminal case. As the police have taken steps to arrest them, they have filed a petition seeking anticipatory bail. In the meantime, complainant's younger son, namely Vijay Bishmar (hereinafter 'Victim No.1') , was also taken into illegal custody by the police and he was under illegal custody continuously for 18 days from 19.03.2010 to 05.04.2010 and during that period, the police (including the petitioner before us) have compelled him to do various kinds of labour work in the police station including cleaning of toilets and other clerical works and they have also beaten him up severely. The



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petitioner herein picked up one Ramachandran, who is the Manager of Madras Hotel on 02.04.2010 and he was taken to Trivandrum where the second respondent's elder son's mother-in-law, namely Mrs.Sujatha (hereinafter 'Victim No.2') is residing. On the pretext of searching for complainant's elder son, petitioner herein along with Mr. Raghupathy, Inspector of Police, two other Sub-Inspectors of Police, namely Mr.Arun and Ms.Pushpa stationed at Trivandrum. On 04.04.2010, the police team searched the house of the Sujatha (Victim No.2) and assaulted her and also one Sudhir Kumar (hereinafter 'Victim No.3') who was staying along with Victim No.2. They were also kept in illegal custody at Bomban Plaza Lodge at SS Koil Road, Phambanur, Trivandrum and they were brought to Chennai through Madras Mail starting from Trivandrum at 02.30 pm on the same day in Coach No.S3, the police team also travelled in the same coach (Seat Nos.25, 26, 27, 29 & 30). Thereafter from the morning of 08.04.2010, they were illegally detained at Mylapore Police Station, and on 09.04.2010, a case was registered in Crime No.488 of 2010 for an offence under Section 212 IPC against Victims 2 and 3. They were produced before the Judicial Magistrate based on the false complaint and subsequently, they were let on



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bail. Thereby, the human rights of victim Nos.1 to 3 were violated.

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3. Based on the above complaint, State Human Rights Commission has taken cognizance of the matter and issued notice to the petitioner herein and another Inspector of Police, namely Mr.Raghupathy. They filed a counter before the Human Rights Commission wherein they have denied the allegations of taking illegal custody of the second respondent's son and they also denied the harassment caused to Victims 2 and 3 at Trivandrum. The police have specifically taken a stand that Victims 2 and 3 were arrested only at Chennai Central Railway Station while they had come to Chennai on their own.

4. The State Human Rights Commission, after conducting an enquiry and after recording the evidence on both sides, has rejected the allegations made against Respondents 1 and 2 therein with regard to the harassment of complainant's son, namely Vijay Bishmar (Victim No.1). However, the Commission has found that there is ample evidence against the petitioner herein and Mr.Raghupathy regarding the allegation of harassment and



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illegal custody of Victim Nos.2 and 3 and ordered compensation by an order

dated 02.04.2018 and concluded as follows:

'(i) The Government of Tamilnadu shall pay a compensation of Rs.50,000/- (Rupees Fifty Thousand only) (each Rs.25,000) to the victims, namely (1) PW4/Sujatha, wife of Tr.Ramachandran Nair, residing at K.R.36, Corporation Journal Office Lane, Perur Kada PO, Trivandrum District, Kerala State and (2) PW5/Sudhir Kumar, s/o.Krishnan Nair, residing at Kusakoda, T.C.8/16021, Thirumala PO, Trivandrum District, Kerala State within four weeks from the date of receipt of this order; and

(ii) The Government shall recover the said sum of Rs.50,000/- (Rupees Fifty Thousand only) from the respondents subsequently as per the rules and regulations.'

5. Aggrieved over the awarding of compensation, the petitioner, who was first respondent before the State Human Rights Commission, has filed this petition seeking writ of certiorari for setting aside the order of State Human Rights Commission dated 02.04.2018.

6. The learned counsel for the writ petitioner submits that based on



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the oral evidence adduced by the PW4 and PW5 (Victim Nos.2 and 3), the State Human Rights Commission has accepted that the allegations of harassment and illegal custody is made out against the petitioner. There is no corroborative evidence to substantiate the evidence of PW4 and PW5 and hence, the finding of the Commission is not sustainable as it is based on no evidence. Therefore, the order passed by the State Human Rights Commission is liable to be set aside and prays to allow the writ petition.

7. The learned counsel for the Respondent No.2 /complainant submits that there was substantial evidence before the Commission, more particularly, the evidence adduced on the side of PW4 and PW5 regarding the events taken place at Trivandrum and subsequent transportation of victims 2 and 3 to Chennai. In the counter filed by the writ petitioner before the Commission, the facts such as taking custody of Victims 2 and 3 on 07.04.2010 and 06.04.2010 respectively, and confinement at the private hotel, as well as the allegation of transporting them to Chennai by train were not specifically denied by the writ petitioner. Further, the evidence of PW4 and PW5 is substantiated by various facts including the fact that police team



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had travelled along with victims from Trivandrum to Chennai in same coach. The State Human Rights Commission/ Respondent No.1 has passed the detailed order holding that the writ petitioner has violated the human rights of Victims 2 and 3. There is no infirmity in the order and prays to dismiss the writ petition.

8. We have considered the submissions made on both sides and also perused the records.

9. The Full Bench of this Court in *Abdul Sathar Vs. Principal Secretary to Government and others [2021 (3) CTC 129]*, while answering the reference that, whether the decision made by State Human Rights Commission under Section 18 of the Protection of Human Rights Act, 1993, is only a recommendation and not an order or adjudication capable of immediate enforcement or otherwise, and the entitlement of officers to challenge the order passed under Section 18 of the above act, under Article 226 of the Constitution and if so, as to which extent observed in Paragraph No.490 as follows:



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"(i) Whether the decision made by the State Human Rights Commission under Section 18 of the Protection of Human Rights Act, 1993, is only a recommendation and not an adjudicated order capable of immediate enforcement, or otherwise?

***Ans:** The recommendation of the Commission made under Section 18 of the Act, is binding on the Government or Authority. The Government is under a legal obligation to forward its comments on the Report including the action taken or proposed to be taken to the Commission in terms of Sub Clause (e) of Section 18. Therefore, the recommendation of the H.R.Commission under Section 18 is an adjudicatory order which is legally and immediately enforceable. If the concerned Government or authority fails to implement the recommendation of the Commission within the time stipulated under Section 18(e) of the Act, the Commission can approach the Constitutional Court under Section 18(b) of the Act for enforcement by seeking issuance of appropriate Writ/order/direction. We having held the recommendation to be binding, axiomatically, sanctus and sacrosanct public duty is imposed on the concerned Government or authority to implement there commendation. It is also clarified that if the Commission is the petitioner before the Constitutional Court under Section 18(b) of the Act, it shall not be open to the concerned Government or authority to oppose the petition for implementation of its recommendation, unless the concerned Government or authority files a petition seeking judicial review of the Commission's recommendation, provided that the concerned Government or authority has expressed their intention to seek judicial review to the Commission's recommendation in terms of Section 18(e) of the Act.*

...

(v) Whether Officers of the State who have been found to be responsible by the State Human Rights Commission for causing violation of human rights under Section 18 of the Protection of Human Rights Act, 1993, are entitled to impeach such orders passed by the Commission in proceedings under Article 226 of the Constitution and if so, at what stage and to which extent?

***Ans:** As we have held that the recommendation of the Commission*



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under Section 18 of the Act is binding and enforceable, the Officers/employees of the State who have been found responsible for causing violation of human rights by the Commission, are entitled to assail such orders passed by the Commission by taking recourse to remedies of judicial review provided under the Constitution of India. It is open to the aggrieved officers/employees to approach the competent Court to challenge the findings as well as recommendations of the Commission."

10. The Commission after taking cognizance of complaint, allowed the respondents in the complaint to file their counter and thereafter on the side of complainant six witnesses including one Head Constable A.Christudoss (PW6) were examined and Exs.P1 to P5 were marked. On the side of respondents writ petitioner was examined as RW1 and another Inspector of Police, Raghupathy was examined as RW2 and Exs.R1 and R2 were marked.

11. In the impugned order, the Commission has recorded a specific finding that, the complaint regarding the manner in which Victims 2 and 3 were arrested, the fact of keeping them in private hotel at Trivandrum, subsequent fact of bringing them to Chennai by train on 08.04.2010 and registering of case in Crime No.488 of 2010 for an offence under Section



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212 IPC on 09.04.2010 and thereafter they were produced before the

jurisdictional Judicial Magistrate, appears to be true. The facts proven before the Commission show that from 07.04.2010 till the registration of the criminal case, almost three days, they were kept in illegal custody. The Commission has also found that even though there is elaborate averment made by the complainant regarding various incidents that took place between 06.04.2010 and 09.04.2010, there were no specific denial of the above allegations and the Commission has accepted the allegation that there is harassment and illegal custody of Victims 2 and 3. We find that these findings are based on evidence and no perversity in the impugned order. The Power of this Court invoking Article 226 of Constitution of India in the nature of writ of certiorari is a supervisory jurisdiction and this Court cannot act as an appellate Court as held by Supreme Court in ***Syed Yakoob Vs. K.S.Radhakrishnan and Others [1964 SCR (5) 64]***. Since we find that ample evidence has been placed before the Commission and the same has been accepted by the Commission, we are not inclined to interfere in the said finding and consequent order of payment of compensation to the victims.



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WEB COPY 12. Accordingly, this writ petition fails and the same is dismissed.

There shall be no order as to costs.

(M.S.,J.) (K.R.S.,J.)
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Index : Yes / No
Neutral Citation : Yes / No
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To

1. The Secretary
State Human Rights Commission
Thiruvaramam Maaligai
Greenways Road
Raja Annamaipuram
Chennai – 600 028

2. The Secretary to Government
Home Department
Secretariat
Chennai – 600 009



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and
K.RAJASEKAR, J.,**

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