



WP.No.11707/2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE N.SENTHILKUMAR

WP.No.11707/2021 & WMP.No.12465/2021

Tmt.Ezhilarasi

... Petitioner

Vs.

1.The Secretary
Home Department,
Government of Tamil Nadu
St.George Fort, Chennai-09.

2.The Registrar,
The Hon'ble State Human Rights
Commission of Tamil Nadu
Thiruvaramam, No.143,
PSK Kumarasamy Raja Salai
Greenways Road, Chennai-28.

3.Tmt.Sundari
4.Thiru.Murugaraj

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of certiorari calling for the records relating to 1st respondent in SHRC.No.1652/2018 by order dated 04.03.2021 and to quash the same.

For Petitioner	: Mr.D.Alexis Sudhakar
For R1	: Mrs.S.Anitha, Spl.GP
For RR2 to 4	: No appearance

ORDER

[Order of the Court was made by S.S.SUNDAR, J.,]

- (1)The present writ petition has been filed by the petitioner challenging the order of the 2nd respondent / State Human Rights Commission [hereinafter referred to as 'the Commission'] dated 04.03.2021 in SHRC Case.No.1652/2018.
- (2)The 3rd respondent herein [hereinafter referred to as 'the complainant'] has filed a complaint before the 2nd respondent/Commission
- (3)The facts that are stated by the complainant can be summarised as follows:
- (4)The complainant is residing in Irundai Village in Villupuram District. In relation to a land dispute, one Rajamani and four others assaulted the



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complainant and caused multiple injuries on 17.02.2017. The complainant lodged a complaint to the petitioner, the Inspector of Police, Ulundurpet Police Station. The writ petitioner demanded a sum of Rs.5,000/- for registering a case. However, even after the complainant paying a sum of Rs.2,000/- to the petitioner, no action was taken by the petitioner herein. Hence, the complainant gave a complaint to the Superintendent of Police, Villupuram District, for taking on file, her complaint. Keeping this in mind, on 08.02.2018, at about 11.30 p.m., when the complainant was in her house, the petitioner along with the 2nd respondent before the Commission and other police personnel, trespassed into the house of the complainant and slapped her on her cheek and also pulled her hair and kicked with shoes. The writ petitioner foisted a case in Crime No.97/2018 for offences under Sections 204[b], 323, 506[i] of IPC against the complainant. The complainant was illegally detained in the Police Station and the writ petitioner refused to give water, food and did not even allow the complainant to attend nature's calls. Therefore, the complainant lodged a complaint before the Commission praying to take action against the writ petitioner as well as the 2nd respondent before the



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Commission alleging human right violations.

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- (5) A common counter affidavit is filed by the respondents before the Commission. In the counter affidavit, it is stated that the respondents before the Commission registered cases against the complainant as well as her opponent in Crime Nos.96/2018 and 97/2018 as both of them gave complaint against each other. It is admitted in the counter affidavit that the petitioner herein took up investigation in both cases and after investigation, arrested both parties and produced before the learned Judicial Magistrate No.2, Ulundurpet and remanded to judicial custody. The demand or receipt of bribe was also denied by the petitioner herein.
- (6) Before, the Commission, the complainant herself as PW1 and reiterated the averments and marked documents which are exhibited as Exs.P1 to P4. The writ petitioner examined herself as RW1 and on the side of respondents before the Commission, 13 documents namely, Exs.R1 to R13 were marked.
- (7) The Commission considered the evidence, both oral and documentary in the light of the specific pleadings. The fact that the complainant was



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arrested and was in jail for a period of six days for offences under Section 294[b], 323 and 506[i] of IPC is admitted. The specific case of the complainant that she was arrested when she was in her house and brought to the Police Station on 08.02.2018 at about 11.00 p.m., was denied by the respondents before the Commission and contended that the complainant was arrested only on the next day.

(8)The fact remains that the complainant filed a complaint earlier on 12.12.2017 against five persons for commission of cognizable offences has been proved before the Commission. Even though the complainant was assaulted and documents were exhibited to show that complainant was beaten and took treatment for injuries, no case was registered. It was only in that context, the complainant was forced to give a further complaint to the Superintendent of Police, Villupuram District, regarding demand and receipt of bribe by the writ petitioner from the complainant.

(9)The fact that this complaint was entertained only on 17.12.2017 is borne out from the CSR Receipt given to the complainant. The Wound Certificate issued to the complainant also shows that the complainant suffered injuries. Despite the complainant suffered injuries and had made



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out a case for registration of FIR for cognizable offences, the case was not registered. The complainant was forced to file a petition before this Court in CrI.OP.No.28861/2017 and a learned Single Judge of this Court, vide order dated 21.12.2017, passed the following order:-

"5.In the result, the petitioner is directed to give a copy of the complaint dated 12.12.2017 to the Station Housing Officer having territorial jurisdiction over the issue. On receipt of the said copy of the complaint, the concerned Station Housing Officer shall adhere to the following directions.

1)If the information received by the 4 nd respondent discloses commission of a cognizable offence, then, the same shall be forthwith registered.

2)If an information received does not disclose a cognizable offence, the 4 nd respondent shall conduct a preliminary inquiry to ascertain whether cognizable offence is disclosed therein or not and such inquiry shall be completed within a period of fifteen days from the date of information.

3)If the inquiry discloses the commission of a cognizable offence, the FIR must be registered, if not already registered or closed.

4)If the preliminary inquiry ends in closing the



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complaint, the closure report must be recorded along with the reasonings and a copy of the same shall be furnished to the complainant within one week.

5)All information relating to cognizable offences whether resulting in registration of FIR or leading an inquiry must be reflected in the general diary/station diary/daily diary of the 4th respondent's police station."

(10)Therefore, the complaint that was lodged on 12.12.2017 was not acted upon till such time a direction was issued by the learned Single Judge of this Court to register a case.

(11)The Hon'ble Supreme Court and this Court, in several cases, has reiterated the duty and responsibility of Police Officers to register the criminal case whenever a complaint is lodged making out a *prima facie* case for commission of cognizable offences.

(12)Therefore, the fact that the petitioner has not taken any action on the complaint, is a human right violation in terms of Section 12 of the Human Rights Act, 1998.

(13)Section 12[a] of the Human Rights Act, 1998, reads thus:-



12. Functions of the Commission.—*The Commission shall perform all or any of the following functions, namely:—*

(a) inquire, suo motu or on a petition presented to it by a victim or any person on his behalf [or on a direction or order of any court], into complaint of— (i) violation of human rights or abetment thereof; or (ii) negligence in the prevention of such violation, by a public servant."

(14)The next point that was considered by the Commission is that the complainant was arrested even though no serious offence was committed by her. Even as per the complaint, that was obtained from a stranger is against the complainant. The Hon'ble Supreme Court and this Court have held that police officers do not arrest the accused unnecessarily and mechanically without following the parameters laid down under Section 41 of the Code of Criminal Procedure.

(15)The very interesting feature regarding arrest of the complainant again requires attention. A complaint was lodged on 08.02.2018 which was registered in Crime No.97/2018 on the same day. The said complaint was given by one Subramanian, S/o.Periyasamy against three named



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individuals, namely [1]Kamaraj ; [2]Selvakumar ; and [3]Murugan. It is to be noted that the complaint does not refer to the presence of the complainant at the time of occurrence. However, after registration of complaint against three others, the complainant was arrested on the same day according to the complainant. Even though the writ petitioner has a different story that the complainant was arrested on the next day, absolutely there is nothing to show the involvement of the complainant. In order to justify the false implication and arrest of the complainant, the petitioner has produced the statement of Subramanian recorded under Section 161[3] of Cr.P.C. The statement does not contain the signature. From the statement of Subramanian, the allegation that the complainant had been falsely implicated, has been proved. Therefore, the arrest of the complainant is an act, which is not only illegal, but resulted in human right violations against the complainant attracting the provision of the Human Rights Act, 1998.

(16)The petitioner has raised a few grounds in the affidavit filed in support of the writ petition. In none of the grounds, the petitioner has met the specific findings of the Commission that prompted the Commission to



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give its recommendations.

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(17) This Court is unable to find any justifiable grounds to interfere with the findings of the Commission.

(18) The learned counsel for the petitioner however came forward with a novel plea that there is no plea or proof as against the petitioner herein. When the counter affidavit filed by the respondents before the Commission discloses that the petitioner was the one who arrested the complainant and the basic facts are not disputed before the Commission, this Court is unable to sustain the arguments of the learned counsel for the petitioner.

(19) Every finding rendered by the Commission is based on proper appreciation of pleadings and evidence both oral and documentary. Even on the admitted facts as narrated by this Court in this order, the petitioner is liable to be dealt with for human right violations. The petitioner who is a Government servant and who is expected to register a case, failed to register the case when a complaint was lodged by the complainant against the accused. Since the complainant has given a complaint against the petitioner herein before the higher officials for demanding and receiving



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bribe, this appears to have propelled the petitioner to implicate the complainant falsely which led to the arrest and remand of the innocent complainant. This can never be permitted on the admitted facts. Therefore, this Court finds no case for interference in the findings and recommendations of the Commission. The Commission has recommended the Government to pay a sum of Rs.1,00,000/- to the complainant and to recover the same from the writ petitioner. The said recommendation is affirmed.

(20) Having regard to the criminal conduct of the writ petitioner in falsely implicating the innocent complainant and for other excess, which is established before this Court, this Court is inclined to dismiss this writ petition.

(21) In the result, the writ petition stands **dismissed**. No costs. Consequently, connected miscellaneous petition is closed.

[S.S.S.R., J.] [N.S., J.]
23.01.2024

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