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W.P.No. 12451 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved on: 22.01.2024

Order Pronounced on: 14.03.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S.SUNDAR
and
THE HONOURABLE MR. JUSTICE N.SENTHILKUMAR

W.P.No.12451 of 2023
and
WMP.Nos.12277 and 12278 of 2023

K. Valarmathi

...Petitioner

Versus

1. The Assistant Registrar (Law)
The Honourable National Human Rights Commission,
Manav Adhikar Bhavan "C" Block
GPO Complex, New Delhi.
2. The Joint Registrar (Law),
The Honourable National Human Rights Commission,
Manav Adhikar Bhavan "C" Block
GPO Complex, New Delhi.
3. The Additional Chief Secretary,
Home (Police - HR) Department,
Government of Tamil Nadu,
Chennai-09.
4. The Secretary,
The Public (HR) Department,
Government of Tamil Nadu,
Chennai-09.



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5. The Additional Chief Secretary
Home Prohibition & Excise Department,
Chennai - 09.
6. The Secretary,
Finance (Home-1) Department
Government of Tamil Nadu,
Chennai-09.
7. The Principal Accountant General,
Chennai-18.
8. The Pay and Accounts Officer,
Chennai - 18.
9. The Director General of Police
Police Head Quarters,
Government of Tamil Nadu,
Chennai.
10. The Commissioner of Police
Greater Chennai City, Vepery,
Chennai- 07.
11. The Joint Commissioner of Police
South Zone, Greater Chennai Police,
St. Thomas Mount, Chennai - 600 016.
12. The Superintendent of Police
Villupuram District, Villupuram.
13. Jeeva @ Subramaniam

...Respondents

Writ Petition is filed under Article 226 of the Constitution of India,
prays to issue of Writ of Certiorari to call for the records relating to the
impugned order passed by the 1st respondent/National Human Rights



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Commission (NHRC) in case No. 969/22/13/2017, dated 13.02.2023 and the consequential order passed by the third respondent in G.O.(D) No. 201 issued by the Home (Police-HR) Department, dated 20.02.2023 and further consequential impugned order passed by the 12th respondent in proceeding in District Order No. 275/2023, Na.Ka.No. K2/127/4935/2023, dated 23.03.2023 and to quash the same.

For Petitioner	: Mr.M.Purushothaman
For RR 1&2	: Mrs.Jaisha Standing Counsel
For RR 3 to 12	: Mrs.S.Anitha Special Government Pleader
For R13	: Mr.B.Divakannan

ORDER

N. SENTHILKUMAR, J

This Writ Petition is filed challenging the order passed by the first respondent/National Human Rights Commission in Case No. 969/22/13/2017, dated 13.02.2023, the consequential order passed by the third respondent in G.O. (D) No.201 issued by Home (Police - HR) Department dated 20.02.2023 and further consequential order passed by the 12th respondent in proceeding in District order No.275/2023, Na.Ka.No. K2/127/4935/2023 dated 23.03.2023 and quash all the aforesaid orders.



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2. Brief facts set out in the writ petition are as follows:-

According to the petitioner, the petitioner was the Investigation Officer in Crime No.572 of 2017 registered against the 13th respondent for the offence punishable under Section 394 of IPC. It is stated that on the basis of the complaint given by one Sundaravelu, the first respondent/National Human Rights Commission has given its recommendation dated 13.02.2023 against the petitioner herein.

2(a) The petitioner herein contends that based on the complaint, that there was a large number of prisoners in the prisons of Tamil Nadu were subjected to torture, the first respondent was pleased to initiate proceedings on the above complaint.

(b) Being satisfied with the nature of allegations contained in the complaint that a huge number of remand prisoners were found with injuries, the first respondent constituted a Special Investigation Team which was headed by the Inspector General of Police and other Higher Officials. The Deputy Superintendent of Police has conducted an enquiry and a final report was submitted before the first respondent/Commission, in which, the petitioner's name was implicated by the Special Investigation



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Team, alleging that the petitioner had caused injury to the 13th respondent at the time of remand of the said individual in connection with Cr.No.572 of 2017.

(c) The first respondent has taken cognizance of the report filed by the SIT constituted by the first respondent and made its recommendation to the 3rd respondent, in which, a direction was given to the Government of Tamil Nadu, to pay a compensation of Rs.7,50,000/- to Sundaravelu, apart from initiating departmental action against the petitioner, as recommended by the Special Investigation Team and further, to submit the enquiry report within a period of four weeks.

3. According to the learned counsel for the petitioner, a Special Investigation Team (SIT) was formed to enquire about the injuries sustained by 325 convicted prisoners at the Central Prison in Tamil Nadu. The Team has noticed that 323 Remand Prisoners have suffered injuries due to various reasons. During such enquiry, 3 cases of alleged human rights violation of prisoners was noticed by the Special Investigation Team constituted by the first respondent.



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4. In connection with the case in Crime No.527 of 2017, a case was registered by the petitioner as against the 13th respondent and he was arrested and remanded to judicial custody. It is stated that the 13th respondent is a habitual offender and he has bad antecedent in the State of Tamil Nadu and in the Union territory of Pondicherry. The antecedents of the 13th respondent are extracted hereunder:-

Cases in Tamil Nadu:

Sl. No.	Police Station & Crime No.	Section of Law
1	Marakkanam-278/2016	394 of IPC
2	Marakkanam-426/2016	394 of IPC
3	Marakkanam-437/2016	394 of IPC
4	Marakkanam-517/2016	394 of IPC
5	Marakkanam-527/2017	394 of IPC
6	Marakkanam-572/2017	394 of IPC
7	Marakkanam-616/2017	457, 302, 397 of IPC
8	Marakkanam-620/2017	294(b), 332, 506(ii), 307 of IPC

Cases in Puducherry:

Sl. No.	Police Station & Crime No.	Section of Law
1	Thavalakuppam-189/2005	302, 449, 382 r/w section 34 IPC
2	Thavalakuppam-189/2005	107 CrPC
3	Thavalakuppam-189/2005	34, AIII of PP Act



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4	Thavalakuppam-189/2005	448, 294(b), 506(ii) of IPC
5	Thavalakuppam-189/2005	107 CrPC
6	Thavalakuppam-189/2005	379 IPC
7	Thavalakuppam-189/2005	392 IPC
8	Thavalakuppam-189/2005	392 IPC
9	Thavalakuppam-189/2005	356, 357 IPC
10	Kirumampakkam	379 r/w section 511 of IPC
11	Kirumampakkam	380 of IPC
12	Kirumampakkam	457, 380 of IPC
13	Kirumampakkam	394, 392 of IPC
14	Kirumampakkam	356, 357 of IPC

5. According to the petitioner, while the 13th respondent was arrested, he sustained injuries on his right leg and immediately taken to the Government Hospital, Muntyampakkam, Villupuram District. The 13th respondent was produced before the jurisdictional Judicial Magistrate but he did not allege anything before the learned Judicial Magistrate at the time of remand.

5(a). It is the further case of the petitioner that when the 13th respondent was taken to the hospital as the injuries was evident on him, he was produced before the Government Hospital, Mundiampakkam, Villupuram District, and the Doctor cum Medical Officer has examined the



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13th respondent. The 13th respondent did not make any allegation, that the injury has happened because of the torture or physical beating at the instance of the writ petitioner. The first respondent/NHRC had constituted a Special Investigation Team to enquire into the allegations against the 325 remand prisoners.

(b) The Special Investigation Team constituted by the first respondent comprised of the Inspector General of Police, the Deputy Inspector General of Police and the Deputy Superintendent of Police and other officials to conduct an enquiry and submit the enquiry report. The Special Investigation Team (SIT) headed by the Deputy Superintendent of Police, Kottakuppam, Villupuram District, has examined the 13th respondent herein who was arrayed as an accused in Crime No.527/2017 for the offence under Section 394 IPC, dated 15.09.2017. During the course of the enquiry conducted by the Deputy Superintendent of Police, Kottakuppam, Villupuram District, the 13th respondent had informed, that the petitioner had tortured him, when he was arrested in Crime No.527 of 2017.



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6. The first respondent/NHRC had taken into consideration of the enquiry report filed by the Deputy Superintendent of Police which is extracted hereunder:-

"It is pertinent to submit that the first respondent/NHRC in its impugned order had extracted the report submitted by the Deputy Superintendent of Police, Kottakuppam Sub-Division, which is extracted as hereunder:-it is submitted in the report that Jeeva @ Subramaniam was in search of various chain snatching cases filed against him at PS Marakkanam, viz., FIR No.527/2017, u/s 394 IPC dated 15.09.2017, FIR No.572/2017 u/s 394 IPC dated 14.10.2017 and FIR No.616/2017 under Section 457/302/397 IPC dated 24.11.2017. From the perusal of the entire report, it has been presented that:

(i) During arrest procedure on 02.12.2017 at 13.00 hrs, accused Jeeva fell down from the ridge pole of bridge and sustained injuries in his right leg. He was arrested and immediately taken to Government Hospital, Muntiyampakkam, Villupuram where he do not mention to the Doctor/MO that he was beaten by the Police.

(ii) Next day, (03.12.2017) accused was presented before the Judicial Magistrate for remand where he stated before the Court that "the sustained injuries were due to the beat and assault of the Police". On hearing this, the Magistrate entered the same in his remand report.

(iii) Accused was presented in Cuddalore Central Prison on the same day (03.12.2017) he told the Asst. Jailor that his right leg was broken and he used to get fits. He never mentioned that he was beaten by the Police to the Asst. Jailor.

(iv) The IO/PI Tmt. K. Valarmathi stated in his statement given to the Enquiry Officer on dated 09.10.2022 refuted the allegations of beating and said that accused tried to run away from that place and while climbing the ridge pole of the bridge he fell down.

v) In his Police Confession given on 02.12.2017, accused stated that, " he himself fell down and sustained injury in his right leg".



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(vi) *Later, the accused in his statement given on 18.12.2019 stated during enquiry that, "he was beaten by Police with Lathi and got injured in his right leg".*

(vii) *Now on enquiry by EO/DSP/Kottakuppam on 08.10.2022 he stated in his deposition that the sign in his Police Confession statement is not his own and that his leg was broken by the Police personnel with iron rod.*

The EO/DSP/Kottakuppam, thus concluded in his report that, accused Jeeva @ Subramaniyam gave three contradictory statement.

(a) Being fell down on his own and got injury in his right leg;

(b) Beaten with Lathi by Police and got injured in his right leg;

(b) Beaten with iron rod by Police and got injury in his right leg.

Thus, the allegations against IO/PI Tmt.K.Valarmathi seems to be motivated and intended to take revenge in pending cases."

7. The learned counsel appearing for the petitioner would submit that even according to the 13th respondent, he had sustained injury at the time of arrest in Crime No.527 of 2017. Whereas, the cognizance was taken by the Commission of offence in the year 2022 and therefore, there is absolutely a delay of seven years from the date of complaint given by one Sundaravelu. The Commission ought to have examined carefully when the 13th respondent, for the first time made his complaint against the petitioner that he was subjected to torture at the hands of the petitioner herein, before the Special Investigation Team and not before any other Authority.



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8. The petitioner further contends that even assuming for a moment that the 13th respondent had sustained injuries at the hands of the petitioner herein, any statement given by the accused to the Police Officer is inadmissible under Section 25 of the Indian Evidence Act. The statement of confession recorded by the Police Officer or even otherwise, if such, statement recorded by the Police Officer it could be under Section 161 CrPC. In the absence of trial before the Criminal Court, which conducts cross examination, the veracity cannot be taken into consideration and such statements cannot be relied upon in the absence of any trial by following the summary procedure.

9. The next contention of the petitioner herein is that the 13th respondent had not preferred any complaint before the first respondent/NHRC regarding torture. From the available records placed before us, it only shows that based on the enquiry report submitted by the Special Investigation Team constituted by the first respondent, there is no other material before us to show that the 13th respondent had filed any affidavit, complaint or documents to establish that he suffered injuries at the instance of the writ petitioner herein.



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10. The next contention of the writ petitioner is that Section 36(2) of the Protection of Human Rights Act, 1993 contemplates that the Commission has jurisdiction to take cognizance of any complaint within a period of one year from the date of the occurrence. The crime was registered against the 13th respondent in the year 2017 and the cognizance was taken by the first respondent is of the year 2022. Therefore, according to the petitioner, the first respondent lacks jurisdiction to take cognizance of the proceedings and it is without jurisdiction to proceed further.

11. The next contention raised by the petitioner is that when the first respondent had received the enquiry report of the Special Investigation Team constituted by it, there are specific allegations in the enquiry report and the same was relied on by the first respondent. The first respondent has not issued any show cause notice to the writ petitioner calling for explanation as to the allegations found in the enquiry report. The main contention of the writ petitioner is that, by not affording an opportunity to the writ petitioner not only to answer to the show cause notice, but also by non-furnishing of the enquiry report, the act of the first respondent deprived the valuable right of the writ petitioner to adduce evidence and materials to satisfy the commission enabling her to explain her stand.



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12. The learned counsel appearing for the respondents 1 & 2 would contend that the complaint was preferred by one Sundaravelu before the first respondent on 14.03.2017 stating that on the false allegations of the local Police at the behest of the accused persons who were indulged in illegal liquor and prostitution, the Police has examined. On the basis of the complaint, the first respondent/NHRC, which took cognizance and taken on file in Case No.969/22/13/2017, dated 27.04.2017, had directed the Chief Secretary, Government of Tamil Nadu and the Commissioner of Police, Chennai, vide its order 27.4.2017 to take necessary action.

13. Pursuant to the communication received by the first respondent dated 27.12.2018, a faulty and evasive nature of the enquiry report was submitted and it was further contended that the complainant Sundaravelu had vital evidence and substantial allegations. Based on the above said communication, the first respondent directed the 3rd respondent. The first respondent on 14.11.2019 referred the investigation division of the Commission for analysis and to conduct spot enquiry.



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14. The Deputy Inspector General of Police, Tamil Nadu, has informed the first respondent that based on the communication of the first respondent, the Director General of Police vide his letter dated 18.10.2019 has formed a Special Investigation Team (SIT) under the head of the Deputy Inspector General of Police, Social Justice and Human Rights, Chennai comprising 13 independent officers of the rank of Superintendent of Police and Deputy Superintendent of Police to submit his enquiry report.

15. On 12.07.2022, the Special Investigation Team (SIT) has submitted its enquiry report that based on the input from the Investigation Division of the 1st respondent/NHRC that in the three cases, allegations were found recorded in the remand order of the Judicial Magistrate qua torture by the Police, including a case in Villupuram District, Marakkanam Police Station in Crime No.572/2017 under Section 394 IPC of remand prisoner Jeeva @ Subramaniam, S/o. Kathavarayan. The Commission recommended the State Government to pay a compensation of Rs.7,50,000/- to Sundaravelu and further the third respondent was directed to initiate departmental action against the petitioner.



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16. The learned counsel for the petitioner has relied upon the following judgments:

(i) In the case of **N.C. Dhoundial v. Union of India and Ors.**, reported in **(2004) (2) SCC 579**, wherein, the relevant Paragraph Nos.15 to 17 extracted hereunder:-

"15. Now let us look at Section 36 of the Protection of Human Rights Act, which reads thus:-

"36. Matters not subject to jurisdiction of the Commission._(1) The Commission shall not inquire into any matter which is pending before a State Commission or any other commission duly constituted under any law for the time being in force.

(2) The Commission or the State Commission shall not inquire into any matter after the expiry of one year from the date on which the act constituting violation of human rights is alleged to have been committed."

*Section 36(2) of the Act thus places an embargo against the Commission enquiring into any matter after expiry of one year from the date of the alleged act violative of human rights. The caption or the marginal heading to the section indicates that it is a jurisdictional bar. Periods of limitation, though basically procedural in nature, can also operate as fetters on jurisdiction in certain situations. If an authority is needed for this proposition the observations of this Court in *SS. Gadgil v. Lal & Co.*' may be recalled. Construing Section 34 of the Income Tax Act, 1922 the Court observed thus: 1922 the Court (AIR p. 176, para 10).*

"10. Again the period prescribed by Section 34 for assessment is not a period of limitation. The section in terms imposes a fetter upon the power of the Income Tax Officer to bring to tax escaped income?

The language employed in the marginal heading is another indicator that it is a jurisdictional limitation. It is a settled rule of interpretation that the section heading or marginal



note can be relied upon to clear any doubt or ambiguity in the interpretation of the provision and to discern the legislative intent (vide Uttam. Das Chela Sunder; Das v. Shiromani Gurdwara Parbandhak Committee? and Bhinka v. Chāran Singh³).

16. In fact, Section 36(2) does not mince the words and the language used is clear and categorical. The marginal note to the section is being referred to only to consider whether the bar created by Section 36(2) has a bearing on the power or jurisdiction of the Commission.

17. The bar under Section 36(2) is sought to be got over by the Commission by invoking the theory of continuing wrong and the recurring cause of action. According to the Commission, every violation of human right is a continuing wrong until and unless due reparation is made. We find it difficult to accept this proposition propounded by the Commission. The short answer to this viewpoint is that such a view, if accepted, makes Section 36(2) practically a dead letter. Moreover, going by the language employed in Section 36(2), we do not think that the concept of continuing wrong could at all be pressed into service in the instant case. The time-limit prescribed is referable to the alleged "act" constituting the violation of human rights. In a case like illegal detention, the offensive act must be deemed to have been committed when a person is placed under detention and it continues so long as the affected person remains under illegal detention. The commission of an offensive act is complete at a particular point of time and it does not continue to be so even after the unauthorized detention ends. It is not in dispute that the complainant was produced before the Special Judge on 3-4-1994 and remand was obtained in accordance with the procedure prescribed by law. The alleged act of unauthorized detention, which gives rise to violation of human rights, ceased on 3-4-1994 and it does not perpetuate thereafter. It is not the effect of illegal detention which is contemplated by Section 36(2) but it is the illegal act itself. It would be a contradiction in terms to Say that the arrest or detention beyond 3-4-1994 was in accordance with law and at the same time the arrest/detention



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continued to be wrongful, It cannot, therefore, be brought under the category of continuing wrong which is analogous to the expression "continuing offense" in the field of criminal law. It cannot be said that the alleged wrongful act of detention repeats itself everyday even after the complainant was produced before the Magistrate and remand was obtained in accordance with law. Beyond 3-4-1994, there was no breach of obligation imposed by law either by means of positive or passive conduct of the alleged wrongdoers. To characterize it as a continuing wrong is, therefore, inappropriate. One-year period for taking up the enquiry into the complaint, therefore, comes to an end by 3-4-1995. Just as in the case of Section 473 CrPC, there is no provision in the Act to extend the period of limitation of one year. However, in the procedural Regulations framed by the Commission a certain amount of discretion is reserved to the Commission. Regulation 8(1 (a) inter alia lays down that "ordinarily" a complaint in regard to events which happened more than one year before the making of the complaint is not entertainable".

The above judgment would clearly show that the first respondent lacks jurisdiction to take cognizance of the offence as it is hit under Section 36(2) of the Human Rights Act.

(ii) In the case of **M.Mahendran and Others v. K.A. Anthony and Others**, reported in **2011 (1) CTC 320**, wherein, the relevant Paragraph No.4 of the order is extracted hereunder:-

4.Placing reliance on the said Section, during the course of arguments the learned Counsel appearing for the petitioners would strenuously argue that the alleged incident of violation of human rights took place on 13.09.2004 and within one year i.e., by 13.09.2005,



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the Commission ought to have instituted the enquiry, but the Commission has chosen to issue summons only on 16.08.2007 and therefore, the enquiry, said to be conducted by the Human Rights Commission, is wholly without jurisdiction and void ab-initio. It has further been argued by the learned Counsel for the petitioners that under Section 18 of the Act, the Commission has powers to recommend to the concerned government or authority to initiate proceedings for prosecution or such other action as the Commission may deem fit against the concerned person or persons and the Petitioners are public servants and were on duty at the relevant point of time when the alleged violation of human rights is purported to have been taken place and the Commission is also invested with powers to conduct an investigation before the institution of enquiry and the said recommendation have serious consequences and hence the provisions of Section 36(2) of the Act will have to be construed strictly and the Commission does not have plenary powers to substitute statutory restrictions.

(iii) In the case of **Mohmed Juned Shamsuddin Saiyed and Ors v.**

K.C. Kapoor and Ors, reported in **2006 SCC Online Gujarat 189**,

wherein the relevant Paragraph is extracted hereunder:-

"43. In its conclusion arrived it after appreciating the fact and evidence on record of the case, the Hon'ble Supreme Court has observed in that case that as there is no clear or incontrovertible evidence about the custodial torture, nor any medical report of any injury or disability, and as the grievance of the petitioner and his relatives is against different officers in different police stations at different points of time, more importantly, several of the allegations are proved to be exaggerated and false, the Court did not consider the said case to be a fit case for



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award of compensation. The Court further observed that all reliefs which should be granted in such a case, have already been granted by ordering an inquiry by CBI and ensuring that the police officers named are prosecuted. The law will have to take its own course."

As rightly held, based on mere bald statements, false and frivolous allegations, which are self-serving in nature, the Court cannot be persuaded to take action against the Police personnel, who are discharging their duties to unearth the crime.

(iv) In the case of **Daniel Fernando v. State Human Rights Commission and Ors** reported in, **2022 SCC Online Madras 8004** wherein, the relevant paragraphs which is extracted hereunder:-

"The complaint filed by the petitioner before the Human Rights Commission has been rejected on the ground that it could not be entertained as it is filed beyond the time granted under Section 36(2) of the Protection of Human Rights Act, 1993.

2.Mr.T. Ramachandran, learned counsel appearing for the petitioner would submit that he had no knowledge of filing of the FIR. Therefore, time would begin to run only from the date on which he had the knowledge of violation.

3.We are unable to concur. There is no power vested in the commission to condone the delay. Section 36(2) of the Protection of Human Rights Act creates an embargo on the Human Rights Commission to entertain complaints which are filed after lapse of an year from the date of alleged violation. The provisions reads as follows:-

---(2) The Commission or the State Commission shall not inquire into any matter after the expiry of one year from the date on which the act constituting violation of human rights is alleged to have been committed.



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4. In view of the above clear language of the provision, we do not think that we can accept the arguments of the learned counsel for the petitioner that time will begin to run from the date of knowledge of violation. Therefore, we see no merits in this writ petition.

In all the judgments, it was held that the first respondent lacks jurisdiction to take cognizance of any complaint within a period of one year from the date of occurrence. As per the available materials on record, the date of occurrence on 15.09.2017 and cognizance taken on 08.08.2019. It is a clear case that NHRC/the first respondent lacks jurisdiction to take cognizance of the complaint.

17. The first respondent came to know about the injuries sustained by the 13th respondent, based on the enquiry report of the NHRC in Case No.969/22/13/2017 dated 03.07.2019.

18. Learned counsel for the respondents submit that based on the complaint given by Sundaravelu, the first respondent has taken cognizance vide its proceedings dated 30.08.2019 and registered a case in FIR No.102/2017 and it has proceeded against the petitioner. The first respondent vide its proceedings dated 30.08.2019, directed the Chief



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Secretary and the Director General of Police, Tamil Nadu to be present on 12.09.2019. Thereafter, the first respondent formed a Special Investigation Team and the Special Investigation Team had conducted an enquiry and submitted its report and based on the report, the Commission made its recommendation to the third respondent.

19. It was held that the respondents 1 & 2 lodged a complaint against the petitioners 1 to 5 alleging certain violation of human rights. The petitioner filed the Writ Petition contending that the alleged incident took place on 13.09.2004 and within one year (i.e.) by 13.09.2005, the Commission ought to have instituted the enquiry, but the Commission issued summons only on 16.08.2007 and hence enquiry is void and hit by Section 36(2) of the Protection of Human Rights Act, 1993.

20. The respondents 1 & 2, the Commission filed its Counter Statement contending that the case was taken on file as Case No.8776 of 2004 and even though the enquiry report was called for from the Principal Chief Conservator of Forests on 29.12.2004, no report was sent till 2007, whereupon the Commission issued summons on 12.09.2007 and the



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petitioners participated in enquiry and filed Counter. In fine, they contended that the case was taken within time and the process alone was delayed. The High Court after perusal of records found that there was no delay on the part of the respondents and the Writ Petition was dismissed.

21. Another judgment reported in **2021 SCC Online Madras 16611**.

The Full Bench (FB) of this Court reported in **Abdul Sathar v. The Principal Secretary to Government and Ors**, wherein the relevant Paragraph Nos.315 to 317 are extracted hereunder:-

"315. The Commission in the course of its inquiry and investigation is also to provide opportunity of hearing to the persons likely to be prejudicially affected in Section 16, which reads as under:—

'16. Persons likely to be prejudicially affected to be heard.- If, at any stage of the inquiry, the Commission-

(a) consider it necessary to inquire into the conduct of any person; or (b) is of the opinion that the reputation of any person is likely to be prejudicially affected by the inquiry, it shall give to that person a reasonable opportunity of being heard in the inquiry and to produce evidence in his defence:-

Provided that nothing in this section shall apply where the credit of a witness is being impeached.'

316. Although, the learned Additional Advocate General submitted that both Sections 15 and 16 have limited application and do not enhance the status of the Commission, particularly, both the Sections, according to the learned Additional Advocate General, negate Sections 145 and 155 of the Evidence Act. But as far as Section 16 is concerned, arguments were advanced by the learned counsel as to how detailed opportunities are to be



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afforded to the persons likely to be affected by the inquiry undertaken by the Commission. An argument was also advanced that when adequate opportunity is contemplated under Section 16 of the Act, when the Commission finds that a delinquent is involved in violation of human rights Act, no further opportunity need be given to him by his/her employer under the relevant service Rules. When the delinquent is given ample opportunity to face a full fledged inquiry with opportunity extended to him to examine and cross examine the witnesses, no further remedy is left open to the delinquent in the form of any separate disciplinary action atleast with reference to the compensation ordered by the Commission and to be recovered from him. In fact, the learned counsel, Ms. Nagasaila, has submitted that in respect of imposition of penalty, a show cause notice may have to be issued to the delinquent servant only on the aspect of proportionality of the punishment and no detailed departmental inquiry is required. In fact, the learned Judge of this Court Shri Justice K.Chandru, in his Judgment in T. Vijayakumar's case', held that providing further departmental opportunities in such matters would amount to extending paradise of remedies' to the delinquent Government servants.

317. Whether the departmental remedy should be extended to the delinquent or not would be a matter of discussion hereunder, but at the same time, what flows from Section 16 is that the persons likely to be affected are given adequate opportunity to participate in the inquiry process and the said provision is enacted in full compliance with the established principles of natural justice. Therefore, a delinquent who is aggrieved by the finding of the Commission, cannot legitimately come up with any complaint that his rights have been violated on the premise of not adhering to the principles of natural justice."

In the above judgments, it is clear that the cognizance taken by the first respondent is without jurisdiction and non furnishing of enquiry report



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which is the basis for the first respondent to make the recommendations against the writ petitioner is of great detrimental to the writ petitioner.

22. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondents and perused the materials placed on record.

23. Now, the three points that arise for consideration for this Court:

(i) Whether show cause notice was issued by the Commission to the first respondent before making its recommendation to the Government?

(ii) Whether the petitioner was given the copy of the enquiry report constituted by the Commission?

(iii) Whether the first respondent lacks jurisdiction to take cognizance of the complaint?

Point No:-1

24. The first respondent has taken cognizance on the basis of the complaint given by one Sundaravelu on 14.03.2017. NHRC vide its proceedings dated 05.09.2019, directed the Director General of Police to



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form a Special Investigation Team and the Director General of Police, by its letter dated 18.10.2019, addressed to the NHRC stating that the Special Investigation Team was constituted and based on the enquiry report submitted by the Special Investigation Team, action was taken against the writ petitioner herein.

25. The Special Investigation Team had submitted its enquiry report with a finding that the writ petitioner had caused injuries to the 13th respondent and the said enquiry report was placed before the first respondent/Commission. The Commission has also taken cognizance of the offence which was registered as against the 13th respondent in Crime No.527 of 2017 for offence under Section 394 IPC on 15.09.2017.

26. Though the first respondent had acted upon the basis of the enquiry report, had not chosen to issue show cause notice to the writ petitioner, which is detrimental to her. Therefore, Point No.1 is decided in favour of the writ petitioner.



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Point No.2:-

27. From the available records before this Court, it is clear that based on the enquiry report submitted by the Special Investigation Team, the first respondent/Commission has made its recommendation to the third respondent for payment of compensation and for departmental action. It is evident that the first respondent had acted upon the enquiry report of the Special Investigation Team. However, the said enquiry report was not furnished to the writ petitioner and the petitioner had no occasion to go through the enquiry report and the complaint, in which allegations are levelled against the petitioner.

28. It is an admitted fact that the Special Investigation Team had conducted the enquiry wherein the 13th respondent was examined by the Deputy Superintendent of Police and the statement recorded by him was part of the enquiry report submitted to the NHRC. The said enquiry report was not furnished to the petitioner herein. Furnishing of the enquiry report is the fundamental duty of the Commission. In the absence of furnishing the enquiry report to the writ petitioner herein, the writ petitioner has been put to great prejudice by not knowing on what basis, the NHRC proceeded



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against the writ petitioner and the charges levelled against her as stated supra. The dictum of the Hon'ble Supreme Court and the Full Bench of the Madras High Court categorically made it clear that non furnishing of the enquiry report vitiate the entire proceedings.

29. We hold that non furnishing of the enquiry report has caused great prejudice to the writ petitioner and this point is answered accordingly.

Point No.3:

30. The fact remains that the first respondent/Commission had completely traversed on the basis of the complaint given by the Sundaravelu. The 13th respondent had not preferred any complaint before the first respondent for the alleged torture committed by the writ petitioner herein. The admitted fact is that in the year 2017, a case was registered in Crime No.572 of 2017 as against 13th respondent.

31. As discussed earlier, there is an inbuilt limitation under Section 36(2) of the Protection of Human Rights Act, that the Commission



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lacks jurisdiction to take cognizance. For the sake of convenience, Section

36 (2) is extracted hereunder:-

Section 36(2)

(1)...

(2). The Commission or the State Commission shall not inquire into any matter after the expiry of one year from the date on which the act constituting violation of Human Rights is alleged to have been committed.

It is clear under Section 36(2), there is a prohibition for the first respondent/Commission to take cognizance of the offence beyond the period of one year and this limitation cannot be condoned in any manner and therefore, taking cognizance by the National Human Rights Commission is barred by limitation. We therefore answer Point No.3 in favour of the writ petitioner.

32. As we have seen from the judgments of the Hon'ble Supreme Court as well as this Court, the jurisdiction for the Human Rights Commission commences on the date of occurrence and within a period of one year, the first respondent has jurisdiction to entertain and to take cognizance of the complaint preferred before it. As the cognizance taken



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by the Commission in this case is of the year 2019 and the occurrence alleged to have taken place by virtue of a crime was registered on 15.09.2017, it is crystal clear the Commission ought not to have entertained the complaint. The first respondent/NHRC has no jurisdiction to take cognizance of the complaint more preferably as against the 13th respondent herein.

33. The first respondent after taking cognizance of the report filed by the Special Investigation Team, had made recommendation to the third respondent for payment of compensation and to initiate Disciplinary Proceedings as against the petitioner without issuing any show cause notice to the writ petitioner and passing an order, which is detrimental to the writ petitioner, behind her back, is wholly unjustifiable and there is substantial and irreparable damage caused to the writ petitioner. The writ petitioner had no occasion or opportunity to place her defence before the first respondent by adducing evidence and by producing materials to substantiate the alleged allegation against the writ petitioner.



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34. As it is seen, only during the enquiry of the Special Investigation Team, the 13th respondent was examined in which, the 13th respondent had made allegations against the writ petitioner. This allegation was brought to the knowledge of the Special Investigation Team only after the constitution of the Special Investigation Team on 18.10.2019. Whereas the allegation of torture as against the writ petitioner is that, while she was working as Inspector of Police attached to Marakkanam Police Station, Villupuram District wherein the writ petitioner herein has filed a case in Crime No.572 of 2017 under Section 394 IPC. Originally, the first respondent has taken cognizance based on the complaint given by Sundaravelu in the year 2017 and thereafter in the year 2019, on the recommendation of the first respondent, the Special Investigation Team was formed. The Special Investigation Team on its enquiry found that there are allegations against the writ petitioner in Crime No.572/2017 for the occurrence which is said to have taken place in the year 2017 but the cognizance was taken in the year 2019 by the first respondent/Commission.



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35. The Writ Petition is allowed on the following three grounds, namely,

(i) In the absence of show cause notice to the writ petitioner herein, it has caused great prejudice and damage to her, in person and in her Service records.

(ii) Non furnishing of enquiry report is detrimental to the writ petitioner and it is against the mandate of the Hon'ble Supreme Court & High Court (Full Bench) which has caused enormous prejudice to the writ petitioner; and

(iii) Taking cognizance is without jurisdiction as contemplated under Section 36(2) of the Act.

36. The 13th respondent is the only aggrieved person. However, the first respondent/NHRC has made its recommendation to make compensation to one Sundaravelu, who is the complainant before the National Human Rights Commission and a compensation of Rs.7,50,000/- was paid to him. The first respondent has made its recommendation on the basis of the report filed by the Special Investigation Team. The award of compensation which was paid by the third respondent herein to the



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complainant Sundaravelu is without any material and any justification.
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37. With the above observations, the Writ Petition is allowed and the impugned order passed by the 1st respondent/National Human Rights Commission (NHRC) in case No. 969/22/13/2017, dated 13.02.2023 and the consequential order passed by the third respondent in G.O.(D) No.201 issued by the Home (Police - HR) Department, dated 20.02.2023 and further consequential impugned order passed by the 12th respondent in proceeding in District Order No.275/2023, Na.Ka.No. K2/127/4935/2023, dated 23.03.2023 are hereby quashed.

38. The complainant Sundaravelu is not the aggrieved person and not the victim as per the findings of the SIT constituted by the 1st respondent. However, based on the recommendation of the 1st respondent, a sum of Rs.7,50,000/- was paid as compensation to Sundaravelu by the 3rd respondent. The 3rd respondent Government shall recover the compensation amount of Rs.7,50,000/- from the said Sundaravelu, who is not entitled to any compensation.



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39. Though the 13th respondent was made as a party in this Writ Petition who supposed to be the victim, had not preferred any complaint before the 1st respondent/NHRC and has not made out any case before the Commission that he was subjected to torture and physical assault by the petitioner herein. In view of the above fact, the 13th respondent is also not entitled to any compensation from the third respondent Government. No costs. Consequently, connected miscellaneous petitions are closed.

[S.S.S.R., J] [N.S., J]
14.03.2024

MSM
Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No



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To

1. The Assistant Registrar (Law)
The Honourable National Human Rights Commission,
Manav Adhikar Bhavan "C" Block
GPO Complex, New Delhi.
2. The Joint Registrar (Law),
The Honourable National Human Rights Commission,
Manav Adhikar Bhavan "C" Block
GPO Complex, New Delhi.
3. The Additional Chief Secretary,
Home (Police - HR) Department,
Government of Tamil Nadu, Chennai-09.
4. The Secretary,
The Public (HR) Department,
Government of Tamil Nadu,
Chennai-09.
5. The Additional Chief Secretary
Home Prohibition & Excise Department,
Chennai - 09.
6. The Secretary,
Finance (Home-1) Department
Government of Tamil Nadu, Chennai-09.
7. The Principal Accountant General,
Chennai-18.
8. The Pay and Accounts Officer,
Chennai - 18.



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9. The Director General of Police
Police Head Quarters,
Government of Tamil Nadu, Chennai.
10. The Commissioner of Police
Greater Chennai City, Vepery,
Chennai- 07.
11. The Joint Commissioner of Police
South Zone, Greater Chennai Police,
St. Thomas Mount, Chennai - 600 016.
12. The Superintendent of Police

Villupuram District, Villupuram.



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W.P.No. 12451 of 2023

S.S.SUNDAR, J
and
N. SENTHILKUMAR, J

MSM

Pre-Delivery Order in

W.P.No. 12451 of 2023

14.03.2024



W.P.No. 12451 of 2023

W.P.No.12451 of 2023

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S.S. SUNDAR, J.

and

N. SENTHILKUMAR, J.

[Order of the Court was made by **N.SENTHIL KUMAR, J.**]

After pronouncing the order in W.P.No.12451 of 2023, the learned counsel for the petitioner submitted that the compensation awarded by the Government was paid to the 13th respondent and not to Sundaravelu, and therefore, the 3rd respondent has to recover the sum of Rs.7,50,000/- only from the 13th respondent.

2.In view of the submission made by the learned counsel for the petitioner, Para No.38 of the order, dated 14.03.2024, made in W.P.No.12451 of 2023 shall read as follows :

*“38.The complainant Sundaravelu is not the aggrieved person and not the victim as per the findings of the SIT constituted by the 1st respondent. However, based on the recommendation of the 1st respondent, a sum of Rs.7,50,000/- was paid as compensation to **the 13th respondent** by the 3rd respondent. The 3rd respondent Government shall recover the compensation amount of*



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*Rs.7,50,000/- from **the 13th respondent**, who is not entitled to any compensation.”*

3.Registry is directed to issue copy of the order to the parties, after effecting the aforesaid modification.

(S.S.S.R., J.) (N.S., J.)
14.03.2024

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S.S. SUNDAR, J.
and
N. SENTHILKUMAR, J.

mkn

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14.03.2024