



W.P.Nos.21143 & 22226 of 2022
and W.P.(MD).No.11647 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on 30.11.2023

Order delivered on 12.01.2024

CORAM

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

W.P.Nos.21143 & 22226 of 2022
and
W.P.(MD).No.11647 of 2022
and
W.M.P.Nos.20141 & 21254 of 2022
and
W.M.P.(MD).No.8229 of 2022

W.P.No.21143 of 2022

M.Jebaraj
Deputy Superintendent of Police,
Thiruthuraipoondi Sub division,
Thiruvarur District.

.... Petitioner

VS

1. The State Human Rights Commission
of Tamil Nadu,
No.143, P.S.Kumarasamy Raja Salai,
(Greenways Road),
Chennai - 600 028.



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2. The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat,
Chennai - 600 009.

3. T.Elankavi,
S/o Late Thiyagarajan,
Mudaliar Street, Pamani Village,
Thiruthuraipoondi Taluk,
Thiruvarur District.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for records pertaining to the impugned order dated 27.01.2022 bearing SHRC Case No.6045 of 2018 passed by the 1st respondent and to quash the same and consequently direct the 3rd respondent to provide compensation of a sum of Rs.5,00,000/- to the petitioner for unnecessarily dragging the petitioner into vexatious proceedings initiated by him.

W.P.No.22226 of 2022

N.Kabilan,
S/o Nagarajan,
The Sub Inspector of Police,
Thiruthuraipoondi Police Station,
Thiruvarur District - 614 713.

.... Petitioner

vs

1. The Principal Secretary to Government,
Home, Prohibition and Excise Department,



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Secretariat,
Chennai - 600 009.

2. The Registrar,
State Human Rights Commission,
No.143, P.S.Kumarasamy Raja Salai,
(Greenways Road),
Chennai - 600 028.

3. Elankavi,
S/o Thiyagarajan,
Mudaliar Street, Pamani Village,
Thiruthuraipoondi Taluk,
Thiruvarur District.

4. M.Jebaraj,
DSP, Sub Division,
Thiruvarur District - 614 713.

5. B.Akilandeswari,
Inspector of Police,
All Women Police Station,
Thiruthuraipoondi Police Station,
Thiruvarur District - 614 713.

6. S.Janakiraman,
HC 1083, Thiruthuraipoondi Police Station,
Thiruvarur District - 614 713.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records relating to impugned recommendation in SHRC Case No.6045 of 2018 issued by the 2nd respondent dated 27.01.2022 and to quash the same.



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D.Akilandeswari,
w/o Karikalan,
Presently working as Inspector of Police,
investigation IUnit of Crime Against women,
(IUCAW) Thanjavur,
residing at
No.81, Hlg New Housing IUnit,
Trichy Main Road,
Thanjavur - 613 403.

.... Petitioner

VS

1. The Registrar (LAW)
State Human Rights Commission,
No.143, P.S.Kumarasamy Raja Salai,
(Greenways Road),
Chennai - 600 028.
2. T.Elankavi,
S/o Late Thiyagarajan,
Mudaliar Street, Bamani Village & Post,
Thiruthuraipundi Taluk,
Thiruvavarur District.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the impugned order dated 27.01.2022 passed by the 1st respondent in SHRC No.6045 of 2018 and quash the same as illegal insofar as the petitioner is concerned.



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For Petitioner
in W.P.No.21143/2022 : Mr.S.Arivazhagan

For Petitioner
in W.P.No.22226/2022 : Mr.D.Alexis Sudhakar

For Petitioner
in W.P.(MD)No.11647/2022 : Mrs.S.Prabha

For Respondents
for R1 in W.P.22226/2022
& for R2 in W.P.No.21143/2022: Mr.P.Gurunathan,
Additional Government Pleader

For Respondents
for R1 in W.P.21143/2022
& for R2 in W.P.No.22226/2022: Mrs.Sharadha Vivek

For Respondents
for R3 in W.P.21143/2022
& W.P.No.22226/2022 &
for R2 in W.P(MD).11647/2022 : Mr.J.T.Rajasuriya

For Respondent No.1
in W.P.(MD).No.11647/2022 : Mr.R.Karunanidhi

ORDER

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

These writ petitions have been filed challenging the order passed by the
State Human Rights Commission in SHRC case No.6045 of 2018, by which,



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the Government of Tamilnadu was directed to pay a compensation of Rs.5,00,000/- to T.Elankavi, S/o Late Thiagarajan within one month from the date of recommendation and the Government may recover Rs.3,00,000/- from the petitioner in W.P.No.21143/2022 and Rs.1,00,000/- each from the petitioners in W.P.No.22226/2022 and W.P(MD).No.11647 of 2022 respectively. The Commission also recommended to take suitable action against these petitioners on the basis of the departmental enquiry already conducted by the ADSP(HQ), Thiruvavur, and further recommended to initiate criminal prosecution against these petitioners.

2. (i) The brevity of the complaint before the State Human Rights Commission is that the complainant Elankavi, the 3rd respondent in W.P.Nos.21143 & 22226 of 2022 and 2nd respondent in W.P.(MD).No.11647/2022 is a part time agent of Sethiya Credit Corporation, having head office at Chennai, wherein one Rajavadivel entered into an agreement with the said finance company to purchase Ashok Leyland Vehicle bearing registration TN-40-6468 through hire purchase agreement on 28.02.2015. Thereafter, the said Rajavadivel was in default in payment of the monthly instalments. Therefore, the vehicle was seized by the finance



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company on 28.08.2017, for which, a private complaint was filed by Rajavadivel before the Judicial Magistrate in CrI.M.P.No.4172/2017 seeking a direction to register a case against Elankavi for offence under Section 379 of IPC. But the same was dismissed by order dated 14.11.2017 on the ground that except the complaint, no other document was furnished before the Court. Thereafter, suppressing the said order, the said Rajavadivel, lodged a complaint before the Inspector of Police, Thiruthuraipoondi on 15.11.2017 for which FIR was registered as against the 3rd respondent in Crime No.541/2017 for offences under Sections 294(b), 506(ii), 384 of IPC r/w 18(i) Tamil Nadu Money Lenders Act 1957 and Section 4 of Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 and Section 25(I)(A) of Arms & Ammunition Act, 1959.

(ii) During the registration of FIR, the concerned police officials attached to Thiruthuraipoondi Police Station namely Kabilan-SI of Police(Petitioner in W.P.22226/2022) B.Akilandeswari, Inspector of Police, (Petitioner in W.P(MD).No.11647/2022), Janakiraman, Head Constable were alleged to have harassed the complainant, Elankavi at the instruction of the (M.Jebaraj),petitioner in W.P.No.21143/2022. Further, M.Jebaraj had alleged



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to have demanded money over phone from Elankavi and when he did not comply the said demand, he was arrested and remanded to judicial custody. Therefore, Elankavi/3rd respondent made a complaint before the State Human Rights Commission/1st respondent and the State Human Rights Commission has passed the aforesaid order. Challenging the same, the present writ petitions have been filed.

3. Learned counsel appearing for the petitioner in W.P.No.21143/2022 would state that the 1st respondent should not have entertained the complaint of the 3rd respondent in view of the provision under Section 9(ii)(xi) of Chapter-II of National Human Rights Commissioner (Procedure) Regulations 1997. He would further submit that the 3rd respondent has not made any allegation against the petitioner except stating that he was threatened by the petitioner over phone demanding money, but neither any document was produced nor evidence was adduced by the 3rd respondent before the 1st respondent/Commission. In the absence of material evidence, the 1st respondent should not have recommended to punish the petitioner. Learned counsel would further submit that the petitioner was working as Deputy Superintendent of Police during the relevant point of time when the 3rd



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respondent made allegation against the petitioner. It is noteworthy to state that the petitioner specifically pleaded before the 1st respondent that he attended the meeting held by DIG of Tanjore on 15.11.2017. Therefore, the order passed by the 1st respondent without any supportive material evidence is liable to be set aside. Learned counsel would further submit that following the complaint only, the 3rd respondent was arrested and produced before the concerned Magistrate Court to remand him to judicial custody. The petitioner, neither registered the complaint nor investigated the crime. The complaint initiated before the 1st respondent against the petitioner is motivated one and the same is liable to be discarded. Further, the 3rd respondent, who was acting as an agent for Sethiya Credit Corporation had indulged in many illegal act by threatening poor farmers who had purchased vehicles on hire purchase agreement and he is not a bonafide litigant and his false claim should have been dismissed by the 1st respondent/Commission.

4. Learned counsel appearing for the petitioner in W.P.No.22226 of 2022 would submit that the State Human Rights Commission has not properly considered the false claim of the 3rd respondent, such as police excess of power use and corruptive practices, without any proper evidence.



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The Commissioner has also failed to consider the malafide statement of the 3rd respondent/ complainant as regards the validity of the fire arm license, he possessed. The Commission has failed to peruse the legal status of the Financial Institution and its loan recovery procedure adopted, as the 3rd respondent failed to follow due process of law in seizing the vehicle without providing any notice to the de-facto complainant. The Commissioner failed to consider the misuse of fire arm by the 3rd respondent/complainant. Learned counsel would further state that there is no clear or incontrovertible evidence such as ocular witness, direct witness or circumstantial evidence to corroborate about custodial torture, nor any medical report of any injury or disability to prove the case of the 3rd respondent. Learned counsel would further submit that the 3rd respondent has performed heinous crime and has been arrested, remanded and charge sheeted in final report and aggrieved in such prosecution, as a consequence to counter the police officials, he had made an exaggerated false complaint.

5. Learned counsel appearing for the petitioner in W.P(MD) No.11647/2022 would submit that while the petitioner was working as Inspector of Police, All Women Police Station, Thiruthuraipoondi, the



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complainant/Elankavi lodged a complaint before SHRC on 23.06.2018 stating that a false case had been foisted against him in Crime No.541/2017 in Thiruthuraipoondi P.S. under sections 294(b), 506(i), 384 IPC and 18(1) of Money Lendering Act, 1957 and Section 4 of the Prohibition of Charging Exorbitant Interest Act, 2003 and Section 25(1)(A) of the Arms Act. The defacto complaint in the case in Crime No.541/2017 had purchased a Ashok Leyland Lorry bearing registration No.TN-40-6468 from the company where the 2nd respondent was working and he failed in payment, for which, a case was filed before the learned Judicial Magistrate, Thiruthuraipoondi in CrI.M.P.No.4172 of 2017, in which, the learned Magistrate dismissed the case on 14.11.2017 that no prima facie case has been made out. However, Elankavi/2nd respondent had foisted a case before the State Human Rights Commission against this petitioner. Learned counsel for the petitioner would submit that during the relevant point of time, the petitioner, Inspector of Police, was holding additional charge of Thiruthuraipoondi Police Station. She took further investigation of the case in Crime No.541/2017 and arrested the accused Elankavi on 15.11.2017 and sent him to judicial custody and handed over the case to the regular Inspector on the next day. However, Mr.Elankavi had mentioned in his complaint before the Commission that the petitioner also



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conspired with other police personnels. The petitioner neither beat him nor gave torture. Further, the 2nd respondent Elankavi did not complain before the Magistrate Thiruthuraipoondi against this petitioner while he was produced for remand. There is no specific allegation against this petitioner. But the SHRC observed that this petitioner also conspired with the petitioners in W.P.Nos.21143 & 22226 of 2022, and committed excess of human rights over the accused and recommended to take criminal action and departmental proceedings against the petitioner and also ordered to make recovery of Rs.1,00,000/- from the petitioner. Learned counsel further stated that in obedience of the order, the petitioner also gave a Demand draft dated 4.7.2022 for Rs.1,00,000/- and it was submitted to State Human Rights Commission on 08.07.2022. Therefore, the learned counsel would pray to refund the deposited amount and to allow the writ petition as prayed for.

6. (i) Per contra, the learned counsel appearing for the contesting respondent/T.Elankavi would submit that the contesting respondent filed a complaint before the Commission to take action against the erring police officials for their deliberate misuse and abuse of official powers. The respondent had falsely implicated in a complaint which was already closed



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and he was physically assaulted in the police station by beating and stamping on chest causing chest pain and in that process, he was put to very critical health condition and survived only because of timely medical intervention.

(ii) Learned counsel would further submit that the Sub-Inspector N.Kabilan took the contesting respondent away from the house in the early hours on 15.11.2017 stating that the DSP had asked him to do so and a sum of Rs.3 lakhs was demanded from him, for which, he was able to pay only Rs.43,000/- which was available at his house at that time. Because of non-payment of demanded amount, the Sub Inspector physically assaulted him and undressed him to his underwear. Knowing well that the complaint of Rajavadivel had already been closed on 11.10.2017 and the CrI.M.P.No.4172 of 2019 filed seeking to register FIR, was dismissed on 14.11.2017, the DSP and the Sub Inspector had called Rajavadivel to police station and took a fresh complaint for the same cause of action of seizing lorry on 28.08.2017 and registered the FIR under various sections of IPC and Money Lendering Act, Protection against Exorbitant Interest Act and Arms Act and utilized Akilandeswari/ petitioner in W.P.(MD)No.11647/2022, in her capacity as Inspector of Police, to prepare various statements and reports and sent the



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contesting respondent for remand before the same Judicial Magistrate who dismissed the criminal miscellaneous petition in the same matter on the previous day. Learned counsel would further submit that though the Judicial Magistrate expressed his unwillingness to remand the contesting respondent in the matter, the Sub Inspector N.Kabilan stated that they have added sections under Arms Act and asked to remand on that basis and accordingly, the contesting respondent was remanded. Owing to the health problem, the contesting respondent lost consciousness in prison and he was taken to Thiruthuraipoondi Government Hospital and thereafter, to Thiruvaiyaru Government Hospital. Subsequently, he came out on bail on 24.11.2017 by order of this Court granted in Crl.O.P.No.25671 of 2017.

(iii) Learned counsel would further submit that the State Human Rights Commission had conducted a fair trial in the matter and had passed a detailed and reasoned order on the basis of the case records. The contesting respondent had also sent representations to the higher officials of the police department, based on which, the petitioners were immediately transferred to various places and also seems to have recommended for disciplinary action against the petitioners. He would further submit that the DSP, in his counter in SHRC,



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has stated as though he was completely unaware of the alleged incidents but on the other hand, the SI and the Inspector of Police had categorically stated in their respective counters and depositions that they acted only upon the instructions of the DSP. The entire cross examination of SI of Police and Inspector Akhilandeswari would throw much light on the illegalities committed by them.

(iv) Learned counsel would further state that the petitioner had stated that the contesting respondent had not stated about the physical assault before the Magistrate at the time of remand and not mentioned about the same in the petition to quash is concerned, the relevant portion at page No.166 of the typed set of papers in W.P.No.22226/2022, the contesting respondent/complaint has stated that in the police jeep, Kabilan threatened him that if he discloses anything about the beating or threatening to the Magistrate, they will finish him while taking to prison and will inform that he died out of heart attack since he was already a patient and they will not face any problem. Learned counsel would further submit that owing to the immense threat to life by the petitioners, the contesting respondent remained silent and the petitioner cannot cite inappropriate technical reasons and try to



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get over his malafide action. Though it is contended by the petitioner in W.P.(MD).No.11647 of 2022 that in the complaint itself the complainant had stated that the Inspector/ petitioner therein had asked the Sub Inspector not to beat the complainant is concerned, the case records show that the DSP had roped in the Inspector and the Sub Inspector to collude with him towards illegal detention, false FIR and illegal arrest etc. Being a public servant, the Inspector/petitioner could have refused to cooperate with them but went ahead to prepare all records and documents towards the illegal arrest though she knew the falsity and illegality involved in the matter. Therefore, there is no ground for her to seek to set aside the reasoned order passed by the SHRC. Learned counsel further submitted that initially, in the CrI.O.P.No.18617 of 2019 filed by the contesting respondent to quash the FIR, interim stay was granted and finally, the same was allowed by this Court by order dated 21.12.2022. Therefore, it is found that the FIR was wrongfully registered by the petitioners without any basis. Hence, he would pray to dismiss all the writ petitions.

7. Heard the learned counsel appearing on either side and perused the materials available on record.



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8. On perusal of the records, it is seen that there was a hire purchase agreement between Sethia Credit Corporation, a finance company and one Rajavadivel. The 3rd respondent herein/complainant (Elankavi) in SHRC No.6045/2018 is an agent of the said Finance Company. A complaint was lodged by Rajavadivel against Elankavi/3rd respondent stating that the said Elankavi had taken away his vehicle(lorry) by threatening him. A case was registered in Crime No.541 of 2017 for the offence under Sections 294(b), 506(i), 384 of IPC, Section 18(1) of Money Lenders Act, 1957, Section 4 of the Prohibition of Charging Exorbitant Interest Act 2003 and Section 25(1)(A) of the Arms Act.

9. The specific contention of Elankavi/3rd respondent is that a false case in Crime No.541/2017 has been registered against him by the petitioners and he was sent to judicial custody and was physically assaulted by the police personnel and thus, there is violation of human rights. However, the contention of the petitioners is that they have neither beat him nor gave torture. It is seen from the records that at the time when he was produced before the Magistrate Thiruthuriaoondai, for remand, he did not complain



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anything against these petitioners. A case was registered against Elankavi only based on the complaint given by one Rajavadivel. Without following the due process of law of issuing notice to the defacto complainant/Rajavadivelu in respect of payment due before seizing the vehicle, the said Elankavi had seized the vehicle by threatening him. Though he had come out on bail by order of this Court in CrI.O.P.No.25671 of 2017 and the FIR in Crime No.541/2017 was quashed in CrI.O.P.No.18617 of 2019 by order of this Court dated 21.12.2022, it cannot be construed that the petitioners have tortured him by registering a false complaint. He was neither detained illegally nor subjected to any mental harassment or torture. Only based on the complaint of said Rajavadivelu, action had been taken against Elankavi. Therefore, the casual police enquiry cannot be termed as human rights violation. Further, during the date of occurrence i.e., on 15.11.2017, M.Jebaraj(DSP), petitioner in W.P.21143/2022 was in the meeting held by DIG of Tanjore and Akilandeswari, Inspector of Police(petitioner in W.P.(MD).No.11647/2022) was in-charge of the concerned police station who registered the case against Elankavi. Therefore, there is no point of Jebaraj torturing Elankavi and only based on the complaint, the case was registered.



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11. The Commission has given a finding that 1st respondent therein (Jebaraj) threatened the 3rd respondent herein (Elankavi) demanding Rs.3 lakhs and since he could not give the amount, a case was falsely registered by 2nd respondent therein (Akilandeswari) including Arms Act at the instigation of the 1st respondent (Jebaraj) without proper enquiry. At this juncture, it is to be noted that Rajavadivelu does not have the knowledge that Elankavi is having a licensed gun. Moreover, he did not state that Elankavi threatened him with knife or some other deadly weapons. He had specifically stated in the complaint that he had threatened him that he would shoot him if he does not pay the due amount and it is also an admitted fact that Elankavi, an agent of a finance company is in possession of licensed gun. Therefore, the allegation made against Elankavi by Rajavadivelu, the complainant in Crime No.541/2017, cannot be brushed aside. Merely because the FIR was quashed



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it will not entitle the 3rd respondent/ complainant to make a complaint against these petitioners for human rights violations. The loan recovery procedure adopted by the 3rd respondent without following due process of law cannot be accepted. The 3rd respondent associated with the financial institution has flouted the process and rules for recovery of loan dues. It is clear that the complainant was not a victim of human rights violation. He was neither detained illegally nor subjected to any mental harassment or torture. The petitioners have summoned Elankavi, conducted enquiry and only on proper investigation, he was remanded to judicial custody. Therefore, without any specific allegations as to how he was harassed by the police officials or threatened by them, the conclusions arrived at by the State Human Rights Commission that there is human rights violation, cannot be countenanced. The petitioners had performed their duty in accordance with law.

12. In view of the above discussions, we are of the opinion that the observations and recommendations of the State Human Rights Commission cannot stand and therefore, the same is liable to be quashed. Accordingly, the impugned order in SHRC Case No.6045 of 2018 dated 27.01.2022 is hereby set aside. However, we are not inclined to grant any compensation as asked for



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by the petitioner in W.P.No.21143/2022. If any amount is deposited by the petitioners, the same shall be refunded to them.

13. In the result, W.P.No.21143 /2022 is disposed of and W.P.No.22226/2022 & W.P.(MD).No.11647/2022 are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

(J.N.B., J.) (N.M., J.)
12.01.2024

vsi

Index : Yes / No

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Neutral citation : Yes / No

To

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of Tamil Nadu,
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2. The Principal Secretary to Government,
Home, Prohibition and Excise Department,
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vsi

Pre-delivery order in

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