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W.P. No.33679 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 26.09.2024

Pronounced on: 22.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

W.P. No.33679 of 2022
and W.M.P. Nos.33138 and 33139 of 2024

1. The Superintendent of Police,
Office of the Superintendent of Police,
District Police Office, Salem District,
K. Pudur, Madurai-7.

2. The Deputy Superintendent of Police,
Office of the Deputy Superintendent of Police,
Samayanallur Sub-Division,
Madurai District.

.... Petitioners

vs.

The Chairman,
The Tamil Nadu State Commission for the
Scheduled Castes and Scheduled Tribes,
No.31, TADCO Building 3rd Floor,
Cenotaph Road 2nd Lane, Teynampet,
Chennai-18.

.... Respondent

PRAYER: This Writ petition has been filed under Section 226 of the Constitution of India seeking to issue a Writ of Certiorari calling for the records of the 1st respondent in connection with Petition No.222 of 2022 dated 15.11.2022 on the file of the Tamil Nadu State Commission for the



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Scheduled Castes and Scheduled Tribes Act, 2021 and quash the same as arbitrary, illegal and in violation of the settled proposition of law.

For Petitioners : Mrs. G.V. Kasthuri,
Additional Public Prosecutor,
High Court, Madras.

For Respondent : Mr. K.R. Arun Shabari for
P. Munusami.

JUDGMENT

(Judgment of the Court was made by P.DHANABAL,J.)

This Writ petition has been filed by the petitioners calling for the records calling for the records of the 1st respondent in connection with Petition No.222 of 2022 dated 15.11.2022 on the file of the Tamil Nadu State Commission for the Scheduled Castes and Scheduled Tribes Act, 2021 and to quash the same.

2. The Tamil Nadu Commission for Scheduled Castes and Scheduled Tribes Act, 2021 is hereinafter called as 'The Act' for the sake of convenience.



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3. The short facts of the case necessary to dispose of this Writ petition are as follows:-

The defacto complainant, one Soundarya, who belonged to Scheduled Caste lodged a complaint before the Alanganallur Police Station and FIR was registered in Cr. No.6 of 2022 and based on the said crime number, investigation was taken place and the police had proceeded with the complaint in accordance with law. When the investigation was pending, the Defacto complainant has sent a representation to the Tamil Nadu State SC / ST Commission dated 07.01.2022 and based on the said representation, the Commission directed the Deputy Superintendent of Police to file a report within 4 weeks. Thereafter, the Commission issued two summons dated 04.05.2022 and 06.06.2022 to the 2nd petitioner and he also appeared before the Commission and submitted a special report regarding Cr. No.6 of 2022 on 19.10.2022 stating that the defacto complainant is not co-operating with the investigation even after receipt of summons dated 03.10.2022 and 06.10.2022. Therefore, they proceeded the investigation in accordance with law. While so, the Commission issued summons dated 15.11.2022 directing the 1st petitioner to register an FIR under the provision of the SC/ST (POA) Act and further directed to appoint



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suitable officer except the 2nd petitioner and to file a fresh report on the newly registered FIR on or before 01.12.2022. Now the said summon is under challenge.

3. The learned Additional Public Prosecutor appearing for the petitioners would submit that one Soundarya, who belongs to Scheduled caste gave a complaint dated 30.12.2021 against a person from the same community for assaulting her, while baby sitting in the neighbouring house and CSR number No.439 of 2021 was issued by the Alanganallur Police Station. In the meantime, the defacto complainant gave an another complaint to the Superintendent of Police and based on the complaint, an FIR was registered in Cr. No.6 of 2022 for the offences under Sections 294(b), 324, 506(i) of IPC read with Section 4 of the Tamil Nadu Prohibition of Women Harassment Act. The accused in that case were also arrested and later released on bail. One of the accused namely Pasupathykanth was found to be in duty on the particular time of occurrence and based on the investigation, his name was deleted.

3.1. While the facts are being so, the defacto complainant sent a



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representation to the Tamil Nadu State SC / ST Commission and the State Commission has sent a summon to the 2nd petitioner directing him to file a report within 4 weeks in respect of case in Cr. No.6 of 2022 on the file of Alanganallur Police Station. In the meanwhile, the 2nd petitioner appeared before the Commission on 27.09.2022 for another cases. While so, during the course of enquiry in other cases, the present matter was enquired orally and the Commission directed to submit a report on the complaint dated 07.01.2022 given by the defacto complainant. Again on 28.09.2022, summons were sent by the 2nd petitioner to the defacto complainant, but she was not at home and his father refused to receive the summons. Again summons were sent through registered post and the same were received by one Prabhakaran, who is husband of the defacto complainant, but none appeared. Therefore, the enquiry report was submitted by the 2nd petitioner to the Commission on 19.10.2022. Not satisfied with the report of the 2nd petitioner, the Commission has sent a notice directing to register an FIR under the provisions of the SC/ST (POA) Act and further directed to appoint a suitable officer except the 2nd petitioner for investigation and further directed to file a fresh report on the newly registered FIR and submit the report on or before 01.12.2022. The direction of the respondent



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Commission to register an FIR is not covered under the powers of the Tamil Nadu State SC / ST Commisison and already a report was submitted to the respondent Commission. In spite of that, the Commission has issued notice dated 15.11.2022. Therefore, the Commission has no power to direct the police Commissioner to register an FIR and appoint an investigation officer. Therefore, the order passed by the respondent Commission is not in accordance with law and the same is liable to be quashed.

4. The learned counsel appearing for the respondent Commission would submit that the defacto complainant Soundarya has lodged a complaint before the respondent Commission dated 07.01.2022 and based on the complaint, the matter was investigated and passed order to register FIR and sought for report, and a report was also filed and not satisfied with the said report. Therefore, the Commission had issued a notice dated 15.11.2022 and in the said notice, if failed to do so, they will issue summons by invoking Section 9 of 'The Act'. Therefore, the order passed by the authority is within the purview of 'The Act'. Therefore, the present petition is liable to be dismissed.



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5. This Court heard both sides and perused the materials available on record.

6. In this case, it is an admitted fact that the defacto complainant has lodged a complaint before the Alanganallur Police Station and FIR has been registered in Cr No.6 of 2022 for the offences under Sections 294(b), 324, 506(i) of IPC and Section 4 of the Tamil Nadu Prohibition of Women Harassment Act. According to the petitioners, they issued summons to the defacto complainant for enquiry, but she did not appear and on investigation, they found that the accused namely Pasupathykhan was found to be in duty on the particular time of occurrence and based on the same, his name was deleted. In the meantime, the defacto complainant sent an another complaint to the Tamil Nadu State SC / ST Commission, who is the respondent herein and based on the said complaint, they issued a notice directing the petitioners to register an FIR under the provisions of the SC/ST (POA) Act and to nominate an another investigation officer other than the 2nd petitioner and after registration of FIR, a fresh report has to be



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sent to the respondent Commission. There is no dispute that already FIR has been registered and investigation was going on. While so, the respondent Commission has directed the investigation agency, who are the petitioners herein to register a fresh FIR under the particular act and to appoint some other investigation officer.

6.1. Now this Court has to analyze whether the 1st respondent Commission has power to issue orders to the petitioners police to register FIR and appoint some other investigation officer and not to appoint the 2nd petitioner as investigation officer. This Court has perused the impugned order and nowhere stated about the powers under which Act they directed the police to register FIR and to appoint investigation officer. It is well settled law that the SC/ST Commission cannot act as regular court and this has been already clarified by the Hon'ble Apex Court in All India Indian Overseas Bank SC/ST Employment Association Vs. Union of India.

7. The power of Commission to direct the concerned police to register the case for a particular offence is not permissible. The Hon'ble



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Division Bench of this Court in G. **Prabhakaran vs. Superintendent of Police**, already held that *the normal course of remedy on a failure or refusal to record the information is to invoke Section 156(3) of the Code of Criminal Procedure after due compliance of Section 154(3) of Cr.P.C.* Therefore, the affected party ought to have approached the appropriate Court. While so, the Commission has no power to direct the police officials to register an FIR for particular section and to appoint a particular investigation officer.

8. No doubt that the Commission has power to exercise the powers of Civil Court in directing the personal appearance for examination of witnesses under Section 9 of 'The Act'. Section 9 of the Act will come into picture, while exercising the power under Section 8 of 'The Act' by the commission. In this case no enquiry was pending on the date of order passed by the respondent and the petitioners were not called for to appear before the respondent Commission under Section 9 of the Act for the enquiry under Section 8 of the Act. The impugned order does not disclose the pending enquiry under Section 8 of the Act. Even any enquiry is pending under Section 8 of the Act, the Commission has power under



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Section 9 of the Act for summoning and enforcing the attendance of any person and examining him on oath, requiring the discovery and production of any document, receiving evidence on affidavits, requisitioning any public record or copy thereof from any Court of office, issuing commissions for the examination of witnesses and documents, and any other matter which may be prescribed. The powers under Section 9 of the Act is powers of a Civil Court, while so the 1st respondent Commission cannot direct the petitioners police to register FIR as if the regular court having criminal jurisdiction. In this case, the respondent has no authority to pass such an order directing the petitioners to register the case and to appoint a particular investigation officer under the Tamil Nadu State Commission for the Scheduled Castes and Scheduled Tribes Act, 2021. Therefore, the order passed by the respondent dated 15.11.2022 is not in accordance with law and without Jurisdiction and the same is liable to be quashed.

9. Accordingly, the Writ petition is allowed and the notice of the respondent in petition No.222 of 2022 dated 15.11.2022 is quashed. No costs. Consequently, the miscellaneous petition are also closed.



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Internet : Yes

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Neutral Citation: Yes/No



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To

The Chairman,
The Tamil Nadu State Commission for the
Scheduled Castes and Scheduled Tribes,
No.31, TADCO Building 3rd Floor,
Cenotaph Road 2nd Lane, Teynampet,
Chennai-18.

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P.DHANABAL,J

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Pre-delivery judgment in
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