



WP.Nos.27969/2018 & 34501/2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on 26.02.2024

Delivered on 14.03.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE N.SENTHILKUMAR

WP.Nos.27969/2018 & 34501/2019

and

WMP.Nos.32532/2018, 35204/2019 & 19722/2023

WP.No.27969/2018:-

V.Adhimoolam

... Petitioner

Vs.

1.The Member

State Human Rights Commission
Thiruvaramgam, No.143
P.S.Kumarasamy Raja Salai
Greenways Road, Chennai 600 028.

2.G.Ravi

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of certiorari calling for the records in respect of the order of dismissal dated 25.07.2018 passed in SHRC.No.1757/2012 issued by the 1st respondent and to quash the same.



WP.Nos.27969/2018 & 34501/2019

WP.No.34501/2019:-

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- 1.V.Adhimoolam
- 2.Mr.M.Azhagu
- 3.Mr.S.Krishnakumar
- 4.Mr.Lawrance

... Petitioner

Vs.

- 1.The Principal Secretary to Government
Department of Home, Prohibition & Excise
Secretariat, St. George Fort
Chennai 600 009.

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

- 3.G.Ravi

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of certiorari calling for the records in respect of the recommendation dated 21.01.2019 in SHRC.No.1757/2012 issued by the 2nd respondent and to quash the same.

For Petitioners in
both Writ Petitions : Mr.A.L.Somayaji, Senior counsel for
Mr.Manoharan Sundaram

For R1 in WP.No.27969/18
& R2 in WP.No.34501/19: Mr.S.Wilson
For R1 in WP.No.34501/19: Mrs.V.Yamuna Devi, Spl.GP
For R2 in WP.No.27969/18
& R3 in WP.No.34501/19 : Mr.A.John Britto



COMMON ORDER

S.S.SUNDAR, J.,

- (1) Since the issue arises for consideration in both the writ petitions are connected and parties to the writ petitions are same, both petitions are disposed of by this common order.
- (2) The Court heard the submissions of Mr.A.L.Somayaji, learned Senior Counsel appearing for the petitioners in both the writ petitions ; Mrs.V.Yamuna Devi, learned Special Government Pleader appearing for the State ; Mr.S.Wilson, learned counsel appearing for the State Human Rights Commission and Mr.A.John Britto, learned counsel appearing for the private respondent.
- (3) The petitioner in WP.No.27969/2018 is the 1st respondent in SHRC Case No.1757/2012. When the complaint was pending before the State Human Rights Commission [SHRC], the petitioner filed a petition to reopen the case for the respondent's evidence. The said petition was dismissed by SHRC on 25.07.2018 after holding that the petition is filed to drag on the proceedings and that the application filed nearly two and half years after the evidence was closed, lacks *bona fides*.



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(4) As against the order dismissing the application filed by the writ petitioner in WP.No.27969/2018, to reopen the case for respondent's evidence, WP.No.27969/2018 is filed.

(5) The Tribunal passed the final order on 21.01.2019 in SHRC Case No.1757/2012 with the following recommendations:-

- i. The Government of Tamil Nadu shall pay a compensation of Rs.3,00,000/- [Rupees Three Lakhs Only] to the complainant Thiru.G.Ravi, S/o.Ganesan, P.No.2/1005, New No.1375, Pandian Street, Akash Nagar, Gerugambakkm, Chennai 600 122 and Rs.1,00,000/- to the complainant's son Sripakkiyan within one month from the date of receipt of a copy of this recommendation and the Government of Tamil Nadu may recover Rs.1,00,000/- each from respondents 1 to 4. The complaint against the 5th respondent is dismissed.*
- ii. This Commission also recommends to initiate disciplinary action against the respondents No.1 to 4 as per the Rules.*



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iii. This Commission further recommends to initiate criminal prosecution against the respondents No.1 to 4.

(6) Aggrieved by the same, the petitioner in WP.No.27969/2018 along with respondents 2 to 4 before the State Human Rights Commission, has filed WP.No.34501/2019.

(7) Brief facts of the case that led to the filing of the above two writ petitions are as follows:-

(8) The 2nd respondent in WP.No.27969/2018, namely, Mr.G.Ravi, is the 3rd respondent in WP.No.34501/2019 and hereinafter, he shall be referred to as 'the complainant'. Petitioners 1 to 4 in WP.No.34501/2019 are hereinafter referred to, either as respondents 1 to 4 before the Commission or petitioners 1 to 4.

(9) The 1st petitioner is the Inspector of Police. The complainant was working as Manager in Saravana Bhavan Hotel in George Town, Chennai. His wife by name Ambiga was a whistle-blower having made several publications about the fraudulent irregularities in Kanchipuram Central



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Cooperative Bank at Porur. The wife of the complainant Smt.Ambiga was stated to be murdered by two identifiable persons in police uniform on 24.01.2012 at 2.00 a.m. The complainant's son is an eyewitness and he lodged a complaint which was registered in Crime No.64/2012 by Mangadu Police Station. The case of the complainant is that he along with his son were taken to Mangadu Police Station on 24.01.2012 at 6.00 a.m. and they were enquired. Again, on 25.01.2012, at about 11.45 p.m., the police took the complainant and his son to Police Station for enquiry and the complainant was detained along with his son. It is the further case of the complainant that they were under illegal custody from 25.01.2012 and were compelled to give a confession admitting the murder of his wife and in that context, they were continuously tortured. After the illegal custody of the complainant and his son from 25.01.2012 in the Police Station and after the brutal attack, the complainant's son was released on 31.01.2012 and however, the complainant was released only on 07.02.2012.

(10)The complainant gave a complaint before the SHRC and a case was registered in SHRC Case No.1757/2012. As a matter of fact, when the



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complainant and his son were in police custody, the mother of the complainant filed a Habeas Corpus Petition in HCP.No.283/2012 before this Court and the complainant was produced before this Court. After noting down the serious allegations made by the complainant's mother against respondents 1 to 4 / petitioners 1 to 4 in WP.No.34501/2019, this Court issued direction to the Commission to treat the affidavit of the complainant filed before this Court as a complaint and directed to conduct proper enquiry and pass suitable orders in accordance with law. Based on the direction issued by this Court in HCP.No.283/2012, the SHRC entertained the complaint as SHRC.No.1757/2012.

(11) Before the Commission, the complainant examined himself as PW1 and his son was examined as PW2. After the closure of evidence, the 1st respondent before the Commission / Inspector of Police, moved the first writ petition in WP.No.27969/2018 to quash the order dated 25.07.2018 passed in SHRC.No.1757/2012, dismissing the petition filed by the writ petitioner in WP.No.27969/2018 to reopen the evidence of the respondent. Since this Court has not granted any interim order in WP.No.27969/2018, the Commission proceeded further with the enquiry and passed final order



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against respondents 1 to 4 in SHRC No.1757/2012 on 21.01.2019.

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Challenging the same, respondents 1 to 4 before the Commission, filed WP.No.34501/2019.

(12)Mr.A.L.Somayaji, learned Senior Counsel appearing for the petitioners submitted that the order dismissing the application filed by the petitioner in WP.No.27969/2018 / 1st respondent before the Commission to reopen the evidence on the side of the respondent, is wholly illegal as respondents 1 to 4 / petitioners 1 to 4 herein were deprived of a valid opportunity to defend the case. The learned Senior Counsel further submitted that application to reopen the case is for valid reasons. Referring to the affidavit filed by the 1st petitioner before the Commission, the learned Senior Counsel pointed out that due to the unexpected death of his son and wife in short intervals, the 1st petitioner was unable to let in evidence at the appropriate time. Since the evidence was closed, the 1st petitioner had to file an application to reopen the evidence on his side to disprove the allegations of violations of human rights before the Commission.

(13)The learned Senior Counsel also pointed out that the Commission was not functioning for want of Presiding Officer from 05.07.2016 to



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01.11.2017 and therefore, the SHRC ought to have considered the application in the light of the admitted facts which would justify the delay.

The learned Senior Counsel then submitted that the recommendations of SHRC are serious and hence, sufficient opportunity ought to have been given to the 1st petitioner in WP.No.34501/2019 to contest the case on merits. He also pointed out that the 1st petitioner is the only competent person to give evidence and there is no reason, why the Commission should hesitate to reopen the case to give one more opportunity to the 1st petitioner.

(14) This Court carefully analysed the submissions of the learned Senior Counsel appearing for the petitioners.

(15) The following facts are not in dispute.

(16) The affidavit/petition filed by the complainant's mother in HCP.No.283/2012 was taken on file pursuant to the direction of this Court. After the complaint was entertained, summons were issued to the petitioners in WP.No.34501/2019 and a common counter affidavit was filed by them on 23.09.2015. PW1 and PW2 were examined and proof affidavits of PW1 and PW2 were filed on 29.12.2015 and 22.03.2016



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respectively. After the examination of PW1 and PW2, the petitioner in WP.No.27969/2018 did not bother to cross examine PW1 and PW2 and the evidence on behalf of petitioners who are respondents before the Commission was closed on 25.04.2018. Thereafter, the matter was posted for arguments. It is admitted before this Court that the petitioner in WP.No.27969/2018 originally filed an application to recall PW1 on 22.03.2018. Even in the affidavit filed in support of the petition, though it was requested that PW1 should be recalled for further cross examination, no details was given justifying such huge delay in filing the said application.

(17)The said application to reopen and recall PW1 and PW2 and to examine the complainant's mother, was dismissed by a common by order dated 21.06.2018. To our knowledge, there is no challenge to the said order. When PW1's evidence stands as per the proof affidavit and there was no cross examination, this Court is unable to see, how the 1st petitioner / 1st respondent before the Commission would improve his case by examining himself without controverting the evidence of PW1 and PW2 in the first place. Assuming that the 1st petitioner / 1st respondent before Commission



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is entitled to file an application to reopen the case for giving evidence on behalf of respondents, the question is whether the Commission has given proper reasons for dismissing the application and this Court will further examine, in the factual circumstances, whether the petitioner should be given an opportunity to reopen his side evidence before the Commission.

(18)The following factual sequences are relevant:

(19)The complainant's wife by name Ambiga was murdered by two identifiable persons in police uniform on 24.01.2012 at 2.00 a.m. and a complaint was lodged in Mangadu Police Station, by the complainant's son who is the eyewitness to the occurrence. After preliminary enquiry on 24.01.2012, at about 6.00 a.m., it is admitted that the complainant was allowed to perform the last rites of his wife. It is the specific case of complainant that on 25.01.2012, at about 11.45 p.m., the 4th respondent before the Commission along with another policeman, took the complainant and his son to Mangadu Police Station for enquiry and he was detained along with his son. It is further stated that from 26.01.2012, respondents 2 and 3 before the Commission took the complainant and his son and asked them to kneel down and thereafter, the complainant and his



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son were assaulted and tortured severely by beating them all over their bodies with wooden logs.

(20)The specific case of the complainant is that the complainant and his son were compelled to confess to the murder of the complainant's wife by the complainant and both the complainant and his son were intimidated, coerced and threatened apart from the very bad treatment under the garb of enquiry. The fact that the complainant and his son were kept in illegal detention in Mangadu Police Station continuously is of course, denied by the petitioners 1 to 4 in WP.No.34501/2019 in their counter affidavit.

(21)From the counter affidavit, it is seen that respondents 1 to 4 admit that the complainant and his son were enquired, but stated further that the complainant and his son were treated kindly as the complainant had already lost his wife and the petitioners knew that they are innocent. It is further stated in the counter that the police had no personal vendetta against the complainant and therefore, there was no necessity to ill-treat the complainant and there was no human right violation. It is repeatedly stated that it is only for proper investigation and to fix the accused persons, the complainant and his son were enquired and they also admit



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that the complainant gave full cooperation in the investigation. It is also stated in the counter affidavit that they followed the directives of the Hon'ble Supreme Court in the matter of investigation of crime and arrest and detention of accused and hence, there is no human rights violation. The later part of counter that the petitioners followed the guidelines relating to arrest shows the inconsistency.

(22) In the counter affidavit, there is no whisper about the petition filed before this Court by the mother of the complainant in HCP.No.283/2012. The mother of the complainant by name Deivanai, when the complainant was in the illegal detention in Mangadu Police Station, sent a telegram to the learned Judicial Magistrate, Sriperumbudur on 02.02.2012. It is stated by the complainant that his son was released on 31.01.2012 whereas, the complainant was in the illegal detention till 07.02.2012. However, from the evidence, it cannot be disputed by the petitioner that the complainant was produced before this Court in HCP.No.283/2012 and it was the complainant who informed about the physical torture suffered by him at the hands of the police who are petitioners in WP.No.34501/2019. It was after seeing and hearing the nature of



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complaint, this Court directed the complainant to undergo medical examination and the complainant appeared before the Regional Medical Board of Rajiv Gandhi Government General Hospital, Chennai, on 09.02.2012 and was examined by a team of doctors. A Report dated 10.02.2012 filed by the Doctors was marked as Exp7 before the Commission. After the perusal of the medical report, the Commission found that the complainant had suffered several injuries on account of custodial torture. Only when the Habeas Corpus Petition was heard by this Court in HCP.No.283/2012, several things were revealed. In the counter affidavit, filed by petitioners in WP.No.34501/2019 before the Commission, absolutely there is no explanation. In other words, the petitioners have not denied as to how the case was referred to SHRC and the matter was entertained as a complaint regarding the illegal detention and custodial torture met by the complainant and his son.

(23) Before the Commission, the 1st petitioner in WP.No.34501/2019 filed a petition to recall PW1 and the said petition was dismissed as the petitioner has not given sufficient reasons for the belated filing of application to reopen and recall PW1 and PW2 and examine the



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complainant's mother. Earlier, petition was dismissed on 21.06.2018.

Thereafter, immediately the subsequent application was filed to reopen the case for the evidence of the petitioner. This was dismissed on 25.07.2018 after recording the fact that the evidence of PW1 and PW2 was over on 22.03.2016 and the petitioner failed to adduce any evidence for nearly two years and four months. The evidence was closed on 25.04.2018. Only when the matter was posted for argument, the previous application to recall PW1 and PW2 was filed and thereafter, following the dismissal of the first application, the present application to reopen the case and to examine the 1st petitioner was filed. Having regard to the sequence of events and the uncontroverted evidence of PW1 and PW2 about the illegal detention and custodial torture, this Court finds no irregularity in the order of the Commission dismissing the 2nd application to reopen the case for examination of the petitioner.

(24)The reason given by the petitioner that the SHRC was vacant upto 01.11.2017, cannot be accepted as valid explanation for the reason that the evidence of PW1 and PW2 was over on 22.03.2016 and the Commission, after giving sufficient opportunity to the petitioners, found



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that none of the petitioners came forward to give evidence on their behalf.

Hence, the Commission closed the evidence on 25.04.2018 and posted the matter for arguments. It was thereafter, the present application is filed without challenging the earlier order of SHRC dismissing the application to recall PW1 and PW2. As pointed out earlier, in the absence of cross examination of PWs.1 and 2 at the instance of the petitioners, this Court is unable to justify the conduct of the petitioners/respondents before the Commission to come forward with the next petition belatedly. The 2nd application is just to drag on the proceedings.

(25) It is well settled that the power to reopen and recall is the inherent power given to Court to render justice. Though the Court has got a discretion in the matter of reopening the case and to recall witness, such power cannot be exercised in all cases by mere asking. When the evidence of complainant was closed on 22.03.2016 and when the petitioner was not successful in his attempt to recall PWs.1 and 2 for cross examination, this Court finds no *bona fides* in the second application which was rightly dismissed by SHRC, after assigning reasons. It is stated by the learned Senior Counsel appearing for the



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petitioners that 1st petitioner's son died and thereafter, his wife became ill and subsequently died. The reason stated by the 1st petitioner may be a ground to seek adjournment and not to abandon the proceedings. In the absence of a challenge to the first order, dismissing 1st petitioner's application to recall PW1 and PW2, the 2nd application to reopen the petitioner's side evidence in a case of this nature, cannot be entertained for want of *bona fides*.

(26) In HCP.No.283/2012, the complainant was produced before this Court.

This Court has recorded the fact that the complainant has stated before this Court that he was kept in the Police Station till 07.02.2012 and made his appearance before this Court on 08.02.2012. The complainant was asked to file an affidavit for any harassment or custodial torture. Having regard to the serious allegations made by the complainant, this Court, vide order dated 08.02.2012, directed the detenu/complainant to be examined by a team of doctors of Rajiv Gandhi Government General Hospital at Chennai.

(27) When HCP.No.283/2016 was listed again on 13.02.2012, the presence



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of the complainant on 08.02.2012 was recorded. Complainant's case that he was taken under police custody and kept in illegal detention till 07.02.2012 was also recorded in the order. This Court considered the report filed by the Dean, Medical Education Department, Rajiv Gandhi Government General Department, Chennai and observed that the medical report reveals the injuries. This Court after finding a *prima facie* case that the complainant was kept in illegal detention till 07.02.2012, recorded their opinion that multiple contusions found in the body of the complainant are due to alleged custodial torture. This Court disposed of the Habeas Corpus Petition, directing the Registry to forward a copy of the original affidavit filed by the detenu on 08.02.2012 to the Chairman of SHRC with a further direction that the affidavit of the detenu / complainant shall be treated as a complaint before the SHRC and to conduct proper enquiry.

(28) It was pursuant to the directions of this Court, the complaint was taken on file by SHRC in SHRC Case No.1757/2012. When the petitioners have not even referred to the facts relating to the manner in which the complaint was entertained, this Court finds that the petitioners are just



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trying to prolong the decision with an intention to delay the relief to the complainant. The nature of allegations against the four petitioners and the sequence of facts in the present case would show that the petitioners' application to reopen the case for his further evidence is not only belated, but also suffers from want of *bona fides*. The intention behind filing the application which is belated, is to take a chance by prolonging the litigation to the prejudice of affected as there is always a possibility of victims of these cases to give up their fight because of the delay and inconvenience.

(29) This Court having regard facts narrated above, is of the view that there is no irregularity or illegality in the order of SHRC dismissing the application filed by the petitioner in WP.No.27969/2018 to reopen the case for examining himself as a witness. **Hence, WP.No.27969/2018 stands dismissed.**

(30) This Court justify the order passed by SHRC dismissing the application for reopening the case for further evidence on the side of the respondents before the Commission. As discussed earlier, the petitioners had consciously made an attempt to delay the proceedings to the serious



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prejudice of the complainant. The evidence of PW1 and PW2 are cogent.

Both PW1 and PW2 were not cross examined. The entire facts led to the filing of the Habeas Corpus Petition and the subsequent conduct of petitioners would only show that there is no *bona fides* in asking for further opportunity after this length of time. The findings of State Commission that the complaint and his son were the victims of human right violations is based on evidence and no other view is possible. However, the Commission has not only awarded a compensation of Rs.3 lakhs to the complainant, but also a sum of Rs.1 lakh to the complainant's son. Though the Commission may be justified in recommending disciplinary proceedings against petitioners 1 to 4 in WP.No.34501/2019, the direction or recommendation to initiate criminal prosecution against petitioners 1 to 4 cannot be allowed having regard to the peculiar facts and circumstances of the case, particularly considering the huge delay. Therefore, **WP.No.34501/2019 is partly allowed and while upholding clauses No.1 and 2 of the recommendations to pay compensation and to initiate disciplinary proceedings, this Court is inclined to set aside clause No.3, namely, initiating criminal proceedings against**



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petitioners 1 to 4 in WP.No.34501/2019.

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(31)In the result,

WP.No.27969/2018 stands dismissed. WP.No.34501/2019 stands partly allowed as indicated above. No costs. Consequently, connected miscellaneous petitions are closed.

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

AP

Internet : Yes

Neutral Citation: Yes

To

- 1.The Principal Secretary to Government
Department of Home, Prohibition & Excise
Secretariat, St. George Fort, Chennai 600 009.
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S.S. SUNDAR, J.,
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AP

Common Order in
WP.Nos.27969/2018 & 34501/2019

14.03.2024