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W.P.No.26998 of 2018



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2024

CORAM:

**THE HON'BLE MR.JUSTICE S.S.SUNDAR
and
THE HON'BLE MR.JUSTICE N.SENTHILKUMAR**

**W.P.No.26998 of 2018
and W.M.P.No.31386 of 2018**

Kasthuri

...Petitioner

vs.

1.State Human Rights Commission – Tamil Nadu,
143, P.S.Kumarasamy Raja Salai,
Greenways Road, Chennai.

2.Tmt.R.Abirami

3.Principal Secretary to the Government,
Home Department,
Fort St.George,
Chennai – 09.

...Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to
issue a Writ of Certiorari to call for the records contained in SHRC
No.8744 of 2013 and quash the order dated 10.09.2018.

For Petitioner : Mr.R.Rajarathinam, Senior Counsel

For Respondents : Mr.G.Nanmaran for R1 & R3
Special Government Pleader
R2 – No appearance



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ORDER

(Order of the Court was made by N.Senthilkumar, J.)

This writ petition is filed by the petitioner challenging the order dated 10.09.2018 made in SHRC No.8744 of 2013 passed by the first respondent/State Human Rights Commission.

2. The brief facts of the case of the complainant are as follows:

2(i). One Prasad entered into the complainant/second respondent ancestral property at Door No.19, Anandam Colony, Mandaveli, Chennai, after the demise of her father and he attempted to grab the same by using forged documents. The complainant/second respondent stored 1500 bricks in the said premises for construction and the same was stolen on 25.07.2011 by the said Prasad. The complainant/second respondent lodged a complaint with E-5 Pattinappakkam Police Station and the same was treated as CSR.No.45/46/CSR/2011 dated 26.07.2011.

2(ii). During the course of investigation, it has been confirmed that the said Prasad had stolen the bricks. Thereafter, the said Prasad brought back 200 bricks and the same was kept in her property in the presence of one Sivalingam, Sub Inspector of Police and the said Prasad also threatened her. The CSR was closed by the respondent Police, who



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threatened her to withdraw her case after receipt of some compensation from the said Prasad. The Police did not proceed further with the complaint given by the second respondent.

2(iii). On 15.09.2011, the second respondent had preferred a complaint against the writ petitioner and three other Police personnel before the first respondent/SHRC stating that one Prasad stolen 1500 bricks and also threatened her in the presence of the respondent Police. According to the second respondent, the Police had received money from the said Prasad for not taking any action against him. Based on the complaint given by the second respondent, the first respondent/SHRC registered a case in SHRC No.7434 of 2011 and the complaint has been forwarded by the first respondent/SHRC to the Joint Commissioner of Police, East Zone, Chennai City to file a report. The Deputy Commissioner of Police, Mylapore, Chennai City has filed a report dated 17.03.2014 stating that the said Prasad has not stolen bricks and the same was ruined in rain.

2(iv). On 05.09.2012 at about 5.00 p.m., she went to her house to remove the encroachments made by the said Prasad. While so, the said

Prasad and his car driver Ganesh had illegally encroached her house; she



had requested Ganesh to handover the key and vacate the premises. The complainant's further case is that unwanted conversation happened between the second respondent and the said Ganesh. At about 8.00 p.m., the said Prasad had come to her place and threatened her to vacate the premises and assaulted her with knife in which she sustained injuries on her cheek and also they snatched a gold chain of 5 sovereigns with Perumal dollar of 1.5 sovereign, mangalsutra and 4 Nos. of 2 gms coins and thrown her cell phone.

2(v). The said Ganesh while holding the hands of the second respondent, instructed Prasad to attack the second respondent wherein the second respondent with unbearable pain started raising alarm. They dashed the second respondent's head on the wall, after that the second respondent fainted, they suspected that the second respondent had died. After 15 minutes, a person named Guna had rescued her when she was found in a pool of blood and had severe head injury and other injuries on her stomach, inside mouth, teeth and swelling on the eyes. They also threatened the second respondent that if she comes again, they will murder her.



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2(vi). The specific case of the second respondent is that on 05.09.2012 immediately after the incident, the complainant/second respondent went to the Police Station with bleeding injuries to prefer a complaint against the said Prasad and Ganesh. The petitioner instead of registering her complaint, had advised the second respondent to go for treatment. The second respondent went to the hospital and once again came to the Police Station on the next day to file a complaint. The writ petitioner did not allow the second respondent to mention about the injuries caused by the said Prasad using knife and the writ petitioner dictated the complaint without mentioning about knife and registered a case under bailable offences as FIR in Crime No.1318 of 2012. The second respondent had filed CrI.O.P.No.2321 of 2012 before the High Court to amend sections and pursuant to the order of the High Court in the above Criminal Original Petition, Sections 294(b), 506(ii) 392 r/w Section 4 of the Women Harassment Act were added in the FIR and on the above said reasons, the second respondent preferred a complaint before the first respondent/SHRC against the writ petitioner for violation of human rights.

3. Learned Senior Counsel appearing for the petitioner contended

that based on the complaint given by the second respondent, a case was



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registered in Crime No.1318 of 2012 for offences punishable under Sections 341, 324, 354 I.P.C., which was marked as Ex.P4 by the complainant before the first respondent/SHRC. As per the first schedule of the code of Cr.P.C., Section 354 is a non bailable offence and therefore, there is no dereliction on the part of the petitioner herein. Mere omission of some section in the FIR will not amount to violation of human rights and the facts mentioned by the complainant has been found in the FIR. Learned Senior Counsel pointed out that since the second respondent was bleeding due to injuries, the writ petitioner intended to save her life, she was directed to go to hospital for treatment.

4. The second respondent was examined as PW1 and filed exhibits P1 to P10 and the Police examined one Stephen as RW1 and the petitioner herein as RW2 and the respondent Police had not filed any document to disprove the case of the complainant.

5 .We have considered the contentions raised by the learned Senior Counsel and perused all the materials available on record.

6. It is true that the FIR was registered by omitting some sections

at the first instance and pursuant to the order in Crl.O.P.No.2321 of



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2012, additional offences were included. However, it would not lead to violation of human rights. On the other hand, pursuant to the information given to the emergency Police by dialing 100, the patrol Police rescued the second respondent who was found with bleeding injuries. When the second respondent went to the Police Station, the petitioner instead of taking her to the hospital had advised the second respondent to go for treatment and the same is in our considered view, a human rights violation. Any person who finds a person with a pool of blood would only take them to the hospital irrespective of the offenses committed/accusations.

7. Admittedly, the second respondent being a victim had come to the Police Station with a complaint, the writ petitioner had not taken the second respondent to the hospital rather directed the second respondent to go to hospital and also delayed in registering the complaint. In our considered view, it is human rights violation and such act cannot be ignored and we see no justification to interfere with the order passed by the first respondent/SHRC.

8. Learned Senior Counsel appearing for the petitioner submitted

that the first recommendation is for a direction to the Government to pay



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a sum of Rs.50,000/- to the complainant/Tmt.R.Abirami, who is the second respondent herein and second recommendation is for the Government to recover the said amount from the writ petitioner and from one Sivalingam. He contended not to initiate any disciplinary action as against the writ petitioner, who is a woman and who was also a probationer at the time of occurrence.

9. Learned Senior Counsel for the petitioner has filed several judgments with respect to maintainability of writ petitions challenging orders/recommendations of the first respondent/SHRC and stated that several questions including whether the SHRC could straight away issue orders for recovery of compensation amount directed to be paid by the State to the victims of violation of human rights under Section 18(i)(a) of the Protection of Human Rights Act, 1993 from the Officers of the State who have been found to be responsible for causing such violation were yet to be decided by the Full Bench of this Court. This Court had an occasion to examine the judgment of this Court on the above issues. In the case of *Abdul Sathar vs. The Principal Secretary to Government, Home Department and Ors. reported in 2021 (3) CTC 129*, wherein, the Hon'ble Full Bench of this Court has made the following observations



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506 (iii)Ans. : Yes, as we have held that the recommendation of the Commission under Section 18 is binding and enforceable, the Commission can order recovery of the compensation from the State and payable to the victims of the violation of human rights under Sub Clause (a) (i) of Section 18 of the Act and the State in turn could recover the compensation paid, from the Officers of the State who have been found to be responsible for causing human rights violation. However, we clarify that before effecting recovery from the Officer of the State, the Officer concerned shall be issued with a show cause notice seeking his explanation only on the aspect of quantum of compensation recoverable from him and not on the aspect whether he was responsible for causing human rights violation.

10. In view of the decision rendered by the Full Bench of this Court, as referred supra, the order dated 10.09.2018 passed by the 1st respondent is legally sustainable and calls for no interference by this Court.

11. Considering the submissions made by the learned Senior Counsel that the writ petitioner being a probationer and a woman, while confirming the first recommendation of the first respondent/SHRC, we direct the Government on considering the peculiar facts and



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circumstances in this case not to initiate disciplinary proceedings against the writ petitioner while recovering the amount which was due to be recovered from her.

12. With the above observation, this writ petition is dismissed.

No costs. Consequently, connected miscellaneous petition is closed.

(S.S.S.R.,J.) (N.S.,J.)
25.04.2024

Index: yes/no
Speaking order:yes/no
Neutral Citation:yes/no
pam

To

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2.Principal Secretary to the Government,
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