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Court : Chennai Madurai

Decided On : Sep-27-2016

Judge : M. Sathyanarayanan &Amp; The Honourable Ms. Justice V.M. Velumani

Appeal No. : W.P.(MD)No. 5204 of 2008 & M.P.(MD)No. 1 of 2008

Appellant : Chinnaiah

Respondent : Sakthivel and Others

Judgement :

(Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records from the second respondent and quash the order passed by the State Human Rights Commission - Tamil Nadu, in S.H.R.C.No.5138 of 2005, dated 25.04.2008.)

V.M. Velumani, J.

1. This Writ Petition has been filed to call for the records relating to the impugned order passed by the second respondent, dated 25.04.2008, in S.H.R.C.No.5138 of 2005, and quash the same.

2. The facts of the case:

According to the first respondent, the petitioner viz., Chinnaiah and one Kaliyamoorthy and Periyasamy while working as Inspector of Police and Head

Constables respectively in Kulithalai Police Station, on 27.12.2004 took the first respondent to Kulithalai Police Station. From there, again, he was taken to Thogamalai Police Station. In the said Police Station, the first respondent was kept and confined in a separate Cell. He was tortured therein by beating all over his body with lathis by the petitioner and two other Police Head Constables mentioned above. He was also kicked up by them with their boot-legs. The first respondent's younger brother viz., Vairan @ Vaairaperumal came to the Police Station and informed to their Advocate-cum-family friend, by name S.Selvagandhi, who in turn informed the same to the Superintendent of Police. The petitioner insisted that the brother of the first respondent to pay bribe of Rs.30,000/- to him and the abovesaid two Police Head Constables insisted on payment of bribe of Rs.5,000/- each. On such payment, the first respondent was allowed to go from the Police Station. The petitioner and the abovesaid two Police Head Constables strictly warned the first respondent that if he would leak out and reveal the happenings either by way of any complaint or by way of taking treatment at any Government Hospital or Private Hospital, he would be implicated in the murder case of one Sulakshana, a retired Teacher of Vaiganallur Agraharam, Kulithalai, which was being investigated by the petitioner. The first respondent subsequently, gave a complaint to the second respondent.

3. The case of the petitioner is that one Sulakshana, a retired Teacher was murdered in the midnight of 19/20-11-2004. The petitioner registered a case in Crime No.834 of 2004 for the offences under Sections 459, 380 and 302 I.P.C. In the course of investigation, he examined totally 292 persons on various dates from 24.11.2004 to 27.12.2004. On 27.12.2004, the petitioner interrogated one Ravi, S/o.Seevangam and Raghupathy, S/o.Raju, who had committed the murder. The first respondent, who is doing Milk Vending business, is a Police Station Bird, indulging and engaging himself in Katta Panchayats. The said Raghupathy (A.2) in the said case was employed by the first respondent in his milk vending business. The accused persons Ravi and Raghupathy used the motorcycle belonging to the first respondent. Therefore, the first respondent was called to Police Station and after interrogation, he was allowed to go out of the Police Station. The petitioner and two Police Head Constables did not take the first respondent to Thogamalai Police Station and did not torture him. The first respondent often used to come to

Police Station to visit the accused persons and tried to influence the petitioner to release the accused persons. The petitioner refused to accede to the request of the first respondent. In view of the same, the first respondent has given a false complaint, after eight months from the date of alleged incident.

4. The second respondent took the complaint on file. The first respondent examined himself as P.W.1 and his younger brother viz., Vairan @ Vaairaperumal was examined as P.W.2 and his brother's friend viz., S.Selvagandhi, Advocate, was examined as P.W.3. P.Ws. 1 to 3 deposed as stated in the complaint and supported the case of the first respondent. The first respondent also produced photographs showing the alleged injuries inflicted by the petitioner and others. The first respondent examined P.W.4 Doctor, who according to the first respondent, treated him after he was allowed to go from the Police Station. P.W.4, the Doctor deposed that the first respondent was his regular patient, but he was not coming to his hospital for the past one year and therefore, no record is available as to whether P.W.4 treated the first respondent, as alleged by him.

5. The petitioner took the following objections before the second respondent.

(i) The complaint was given after a delay of eight months of alleged torture by the petitioner. The first respondent has not explained the delay in giving complaint.

(ii) The petitioner was investigating the murder of Sulakshana, a retired Teacher. 292 suspects were interrogated. The main accused persons Ravi and Raghupathy were interrogated on 27.12.2004. The said Regupathy/A2 was employed by the first respondent in the milk vending business. The accused persons in the said case, used the motorcycle of the first respondent to murder the said Sulakshana, a retired Teacher. The first respondent was also interrogated and he was let off. The first respondent was not tortured as alleged by him.

(iii) The Departmental Proceedings had been initiated against the petitioner and two others and therefore, the complaint before the second respondent, is not maintainable as per Section 36 of the Protection of Human Rights Act, 1993.

6. The second respondent after considering the oral and documentary evidence, viz., P.Ws.1 to 3 and M.O.1 Photographs filed by the respondent, held that the first respondent was tortured by the petitioner and two others. On coming to the said conclusion, the second respondent directed the Government to pay a sum of Rs.1,00,000/- and Rs.50,000/- towards compensation to the first respondent and S.Selvagandhi respectively and recover the same in the ratio of Rs.1,00,000/- from the petitioner and Rs.25,000/- each from the two Police Head Constables.

7. Against the said order, dated 25.04.2008, the present writ petition is filed.

8. Mr.M.Michael Bharathi, learned counsel for the petitioner submitted that the second respondent erred in passing the order for the following reasons.

(a) The first respondent has given complaint after eight months and the reason given by the first respondent for the delay is not acceptable one.

(b) Apart from interested evidence of the first respondent, his brother and brother's friend, no independent witness was examined to prove the torture by the petitioner and others.

(c) P.W.4 Doctor has categorically stated that there is no record to show that he treated the first respondent for the alleged injuries suffered by him due to police torture and he does not remember having treated the first respondent.

(d) Departmental enquiry was conducted and punishment of postponement of next increment for a period of one year without cumulative effect was imposed by the Deputy Inspector General of Police, Trichy Range and subsequently, on appeal before the Additional Director General of Police (Law and Order), Chennai 4, the same was set aside holding that the petitioner has not committed any offence and therefore, he prayed for allowing the writ petition.

9. Mr.S.Deenadhayalan, learned counsel for the first respondent submitted that the first respondent was originally taken to Kulithalai Police Station on 27.12.2004 and subsequently, taken to Thogamalai Police Station. In the said Police Station, he was tortured by beating all over his body with lathis by the petitioner and two Police Head Constables and was also kicked up by them with their boot-legs. The

first respondent has explained the delay in filing the complaint before the second respondent, by giving valid reason and proved the torture and injury inflicted by the petitioner and others. The second respondent after considering all the materials, has rightly awarded compensation to the first respondent, by giving cogent and valid reasons and therefore, there is no reason or circumstance warranting inference with the said order and prayed for dismissal of the writ petition.

10. We have carefully perused all the materials available on record and considered the arguments advanced by the learned counsel appearing for the parties.

11. The case of the first respondent is that on 27.12.2004 he was taken to Kulithalai Police Station and subsequently to Thogamalai Police Station, where he was tortured by the petitioner and two Head Constables. Only on payment of Rs.30,000/- to the petitioner and Rs.5,000/- to each of the Head Constables, he was allowed to leave the Police Station on 28.12.2004. He was strictly warned not to give any complaint against the petitioner and two others. Only for that reason, he did not give any complaint to the second respondent immediately and he had explained the delay properly. The second respondent accepted the said contention of the first respondent. The said conclusion of the second respondent is unacceptable. The second respondent failed to see that according to the first respondent, Mr.S.Selvagandhi, who is a family friend and Advocate, was immediately informed about illegal detention. The said Selvagandhi informed the Superintendent of Police about the first respondent's illegal detention and torture. In the circumstances, it cannot be believed that the first respondent did not give complaint immediately due to threat by the petitioner. An Advocate was guiding the case of the first respondent and a complaint was lodged with the Superintendent of Police immediately. Therefore, the reason given by the first respondent is not valid and the second respondent erred in accepting the same. Before the second respondent, the first respondent examined himself as P.W.1, his brother was examined as P.W.2 and the Advocate S.Selvagandhi was examined as P.W.3. Apart from these interested witnesses, a Doctor, an independent witness, who allegedly treated the first respondent was examined as P.W.4. He did not support the case of the first respondent. He has stated that

there is no record in the Hospital to show that the first respondent was treated as alleged by him. The evidence of P.W.4 and the delay in filing the complaint lead to the conclusion that there is no proof for the alleged torture and illegal detention of petitioner and others.

12. A departmental proceeding was initiated against the petitioner and two Head Constables on the very same set of facts. The disciplinary authority found the petitioner guilty of charges and imposed punishment of stoppage of increment for one year without cumulative effect. On appeal, the said findings and punishment were set aside and the petitioner was exonerated.

13. Considering all the above facts and the reasons statedabove, the order of the second respondent, dated 25.04.2008, inS.H.R.C.No.5138 of 2005, is liable to be set aside and accordingly,the same is set aside. The Writ Petition is allowed. No costs.Consequently, M.P.(MD)No.1 of 2008 is closed.

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