

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.02.2024

DELIVERED ON : 29.04.2024

CORAM:

THE HON'BLE MR.JUSTICE S.S.SUNDAR

and

THE HON'BLE MR.JUSTICE N.SENTHILKUMAR

W.P.Nos.8516, 6857 and 8169 of 2001

Shri.P.K.Manimandram
Administrative Officer (Retd.), CIBA
Srividya Nilayam, Meena Estates,
Sowripalayam Road,
Coimbatore – 28. ...Petitioner in W.P.No.8516/2001

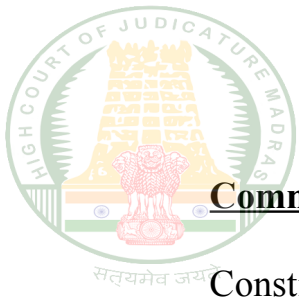
Ra.Sushil Kumar,
Inspector of Police,
Crime Banch CID,
Metro Wing, Chennai – 600 002. ...Petitioner in W.P.No.6857/2001

Dr.G.R.M.Rao,
Director,
Central Institute of Brackishwater Aquaculture,
160, Mahalingapuram Main Road,
Chennai – 600 034. ...Petitioner in W.P.No.8169/2001

vs.

1.State Human Rights Commission,
Tamil Nadu,
Represented by its Secretary,
Justice Pratap Singh Malligai,
No.35, Thiru-vi-ka Salai,
Royapettah, Chennai – 600 014.

2.Tmt.V.Usha Rani ...Respondents in all petitions



Common Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records culminated in the impugned order in SHRC No.3315/2000/RRS dated 08.12.2000 on the file of the 1st respondent and to quash the same, consequently forbear the respondents from taking any proceedings or any action in pursuance of the aforesaid impugned order.

For Petitioners

in all petitions : Mr.S.R.Sundaram,
Senior Central Government Standing Counsel

For Respondents

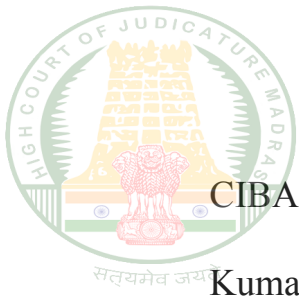
in all petitions : Mr.B.Damodaran for R1
Mr.B.Suresh Kumar for R2

COMMON ORDER

N.SENTHILKUMAR, J.

These Writ Petitions have been filed seeking to set aside the order passed by the first respondent in SHRC No.3315/2000/RRS dated 08.12.2000 and to forbear the respondents from taking any proceedings or action in pursuance of the aforesaid impugned order.

2. W.P.No.8516 of 2001 is filed by the petitioner P.K.Manimandram, Administrative Officer (Retd.), CIBA and W.P.No.8169 of 2001 is filed by the petitioner Dr.G.R.M.Rao, Director,



CIBA, and W.P.No.6857 of 2001 is filed by the petitioner Ra.Sushil Kumar, Inspector of Police, CB-CID, Chennai against the order passed by the Tamil Nadu State Human Rights Commission/the first respondent herein.

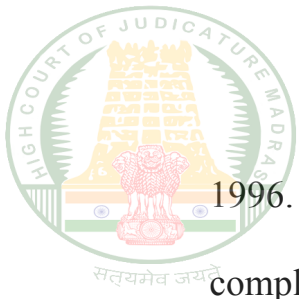
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Common facts arising out of the case of the petitioners are as follows:

3. The complainant before the first respondent who is arrayed as the second respondent herein, had preferred a complaint before the first respondent which was taken on file as SHRC No.3315/2000/RRS stating that she belongs to Sholaga Community classified as Scheduled Tribe. She had obtained a community certificate dated 19.11.1986 from the Tahsildar, Rasipuram, Namakkal District (formerly part of Salem District). She entered the service of the Central Institute of Brackishwater Aquaculture, Chennai (hereinafter referred to as CIBA) as Junior Clerk provisionally on 20.09.1989, on the basis of community certificate produced by her declaring that she belongs to Scheduled Tribe.

4. After completion of probation on 20.11.1991, she was promoted as a Senior Clerk on 24.05.1995. The petitioner in

W.P.No.8516 of 2001 came on transfer as Administrative Officer in May



1996. According to the petitioner in W.P.No.8169 of 2001, the complainant had made allegations against the petitioner in W.P.No.8516 of 2001 that he was making advances with baser instincts. However, there was no materials or evidence in support of her allegation. The complaint was not made till 27.02.1999 and the complaint was directly made to the Appointing Authority.

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5. The specific case of the Writ Petitioner P.K.Manimandram is that as per the records, the second respondent's community certificate was not verified at the time of her employment. But the community certificate was sent for verification when she was promoted as a Senior Clerk. The District Collector had cancelled the second respondent's community certificate after holding an enquiry and the second respondent's service was terminated and thereafter a CB-CID complaint was also preferred.

6. During the Police investigation, the witnesses in Paramakudi, Trichy and Chennai where the second respondent had her education were examined. The original School Certificate containing SSLC record book and the Original Community Certificate were recovered pursuant to a search conducted after obtaining necessary warrant from the Court. The



Secondary School Cumulative record book of the second respondent was found to be tampered by erasing the letter “R” in the word “Sholaga”.

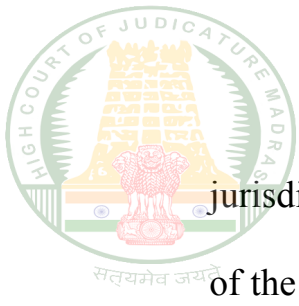
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According to them, it was a serious crime committed by the second respondent.

7. The Writ Petition in W.P.No.10333 of 2000 was filed by the second respondent, challenging the order of cancellation of community certificate which was pending before this Court, in the absence of any stay, the pendency of the Writ Petition did not preclude the Police in conducting the investigation.

8. The Writ Petitioners' contentions are that for the occurrence that took place in the year 1996, the complaint was preferred before the first respondent/SHRC only on 31.10.2000. Section 36(2) of the Protection of Human Rights Act, 1993 contemplates that the Commission has jurisdiction to take cognizance of any complaint within a period of one year from the date of occurrence.

9. Since the occurrence had taken place in the year 1996 and the complaint was preferred before the State Human Rights Commission only on 31.10.2000, the primary contention is that the SHRC lacks



jurisdiction beyond the period of one year from the date of commission of the offence.

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10. The contentions of the second respondent is that the Writ Petitioner in W.P.No.8516 of 2001, P.K.Manimandram after joining the office in the year 1996 started making unwarranted, unwanted advances towards her. Since the second respondent resisted his nasty unbecoming behaviour, the said P.K.Manimandram started threatening her with dire consequences including dismissal from service. He did not stop with mere threatening but raised an issue with the community certificate stating that the certificate was bogus one and a complaint was forwarded to the District Collector, Namakkal to enquire into the genuineness of the said community certificate through a self-styled non-existent “CIBA Employees Welfare Association” created by the petitioner and managed to send 100 of complaints to the Collector of Namakkal seeking cancellation of her community certificate.

11. The District Collector, Namakkal cancelled the community certificate issued in favour of the second respondent, despite the fact that the second respondent being a permanent employee, her service was terminated on 26.05.1998. The second respondent filed W.P.No.7701 of



1998 challenging the order of the District Collector cancelling her community certificate and she also challenged her termination order before the Central Administrative Tribunal in O.A.No.459 of 1998. This being the situation, the Central Administrative Tribunal set aside the order of termination and directed reinstatement of the second respondent on 04.12.1998.

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12. The said P.K.Manimandram not being satisfied with the order of termination, filed a complaint with the CB-CID Police, Chennai and a case was registered in Crime No.7 of 98 for offences under Sections 420, 465, 466, 471, 168 of I.P.C. The second respondent was arrested on the basis of the complaint given by the said P.K.Manimandram on 12.02.1999, which was a Friday. She was remanded in judicial custody by the Xth Metropolitan Magistrate, Egmore and was kept under incarceration for a period of two days and she was released on bail on 14.02.1999. Since she was in custody beyond 48 hours, the said P.K.Manimandram ensured that the second respondent could be suspended from service on 12.02.1999. According to the second respondent, her arrest was published in almost all the daily newspapers at the instance of P.K.Manimandram who targeted the second respondent in all possible ways to damage her reputation and spoil her name in the

society.



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13. The Second respondent had filed a Writ Petition in W.P.No.7701 of 1998 challenging the cancellation of her community certificate and the same was allowed by this Court on 05.10.1999. Pursuant to the said order, the District Level Scrutiny Committee after the enquiry, cancelled the community certificate of the second respondent on 20.12.1999. The second respondent has filed a Writ Petition in W.P.No.4879 of 2000 challenging the cancellation order and the cancellation order was set aside by this Court on 22.03.2000.

14. Learned counsel for the second respondent submitted that the writ petitioner in W.P.No.8516 of 2001, P.K.Manimandram did not stop his hunt against her and once again made the District Level Vigilance Committee to verify the genuineness of the community certificate and the District Level Vigilance Committee cancelled her community certificate on 30.05.2000 and the said cancellation order was once again challenged by the second respondent in W.P.No.10333 of 2000 and the same was allowed on 10.08.2005.

15. The second respondent's community certificate was once again sent for verification which was referred to the District Level Scrutiny Committee headed by the same Collector who originally cancelled the



community certificate. Though the contentions of the second respondent

is that due to medical advice, she was advised not to travel for 15 days,

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she was handed over 13 documents and the same was submitted to the

District Collector through her counsel.

16. Learned counsel for the second respondent further submitted that the District Collector had arbitrarily cancelled the community certificate, against which a Writ Petition was filed by the second respondent in W.P.No.4879 of 2000, the said Writ Petition was allowed with a direction to the District Level Vigilance Committee to examine the same afresh. The Committee headed by the same Collector once again cancelled the community certificate based on the earlier report filed by the Revenue Divisional Officer. According to the second respondent, the said Report of the Revenue Divisional Officer was not furnished to her. The second respondent once again filed a Writ Petition in W.P.No.10033 of 2000 and sought for a direction to her employer not to terminate her service.

17. Learned counsel for the first respondent/Commission submitted that the Commission had made its recommendations to the respective Governments by following the procedure. Learned counsel



for the first respondent categorically submitted that there is no procedural violation or the orders passed by the first respondent do not suffer from any procedural irregularity or illegality and the recommendations of the first respondent was in accordance with law.

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18. The first respondent after considering the entire facts as stated supra, has made its recommendation on 08.12.2000 which are as follows:

a) The Government of India, shall pay a sum of Rs.3.00 lakhs (Rupees three lakhs) as compensation to the complainant;

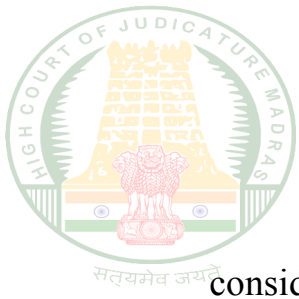
b) The said compensation amount shall be recovered from the respondents 1 and 2.

c) The Government of Tamil Nadu shall pay a compensation of Rs.1.00 lakhs to the complainant.

d) The said compensation amount shall be recovered from the 3rd respondent.

19. As against the order passed by the first respondent with the above recommendations, the present writ petitions have been filed.

20. This Court has given anxious consideration of the rival submissions made on behalf of the petitioners as well as the first and second respondents herein.



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21. All the three Writ Petitioners raised a common point for consideration of this Court that the SHRC has no jurisdiction under Section 36(2) of the Protection of Human Rights Act, 1993, since the date of occurrence and the date of cognizance taken by the SHRC is hit by Section 36(2). For the sake of convenience, Section 36 (2) is extracted hereunder:-

Section 36(2)

(1)...

(2). *The Commission or the State Commission shall not inquire into any matter after the expiry of one year from the date on which the act constituting violation of Human Rights is alleged to have been committed.*

22. That apart, the Writ Petitioner in W.P.No.8516 of 2001 has raised a specific plea before this Court that there was no opportunity given by the SHRC for filing a written statement. Thereby, he lost his valuable right of defending his case before the SHRC.

23 (i). In the case of **N.C. Dhoundial v. Union of India and Ors.**, reported in (2004) (2) SCC 579, wherein, the relevant Paragraph Nos.15 to 17 are extracted hereunder:-

"15. Now let us look at Section 36 of the Protection of



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Human Rights Act, which reads thus:-

"36. Matters not subject to jurisdiction of the Commission. (1) The Commission shall not inquire into any matter which is pending before a State Commission or any other commission duly constituted under any law for the time being in force.

(2) The Commission or the State Commission shall not inquire into any matter after the expiry of one year from the date on which the act constituting violation of human rights is alleged to have been committed."

*Section 36(2) of the Act thus places an embargo against the Commission enquiring into any matter after expiry of one year from the date of the alleged act violative of human rights. The caption or the marginal heading to the section indicates that it is a jurisdictional bar. Periods of limitation, though basically procedural in nature, can also operate as fetters on jurisdiction in certain situations. If an authority is needed for this proposition the observations of this Court in *SS. Gadgil v. Lal & Co.* may be recalled. Construing Section 34 of the Income Tax Act, 1922 the Court observed thus: 1922 the Court (AIR p. 176, para 10).*

"10. Again the period prescribed by Section 34 for assessment is not a period of limitation. The section in terms imposes a fetter upon the power of the Income Tax Officer to bring to tax escaped income."

The language employed in the marginal heading is another indicator that it is a jurisdictional limitation. It is a settled rule of interpretation that the section heading or



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marginal note can be relied upon to clear any doubt or ambiguity in the interpretation of the provision and to discern the legislative intent (vide Uttam. Das Chela Sunder, Das v. Shiromani Gurdwara Parbandhak Committee and Bhinka v. Chäran Singh).

16. In fact, Section 36(2) does not mince the words and the language used is clear and categorical. The marginal note to the section is being referred to only to consider whether the bar created by Section 36(2) has a bearing on the power or jurisdiction of the Commission.

17. The bar under Section 36(2) is sought to be got over by the Commission by invoking the theory of continuing wrong and the recurring cause of action. According to the Commission, every violation of human right is a continuing wrong until and unless due reparation is made. We find it difficult to accept this proposition propounded by the Commission. The short answer to this viewpoint is that such a view, if accepted, makes Section 36(2) practically a dead letter. Moreover, going by the language employed in Section 36(2), we do not think that the concept of continuing wrong could at all be pressed into service in the instant case. The time-limit prescribed is referable to the alleged "act" constituting the violation of human rights. In a case like illegal detention, the offensive act must be deemed to have been committed when a person is placed under detention and it continues so long as the affected person remains under illegal detention. The commission of an offensive act is complete at a particular point of time and it does not continue to be



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so even after the unauthorized detention ends. It is not in dispute that the complainant was produced before the Special Judge on 3-4-1994 and remand was obtained in accordance with the procedure prescribed by law. The alleged act of unauthorized detention, which gives rise to violation of human rights, ceased on 3-4-1994 and it does not perpetuate thereafter. It is not the effect of illegal detention which is contemplated by Section 36(2) but it is the illegal act itself. It would be a contradiction in terms to say that the arrest or detention beyond 3-4-1994 was in accordance with law and at the same time the arrest/detention continued to be wrongful, It cannot, therefore, be brought under the category of continuing wrong which is analogous to the expression "continuing offense" in the field of criminal law. It cannot be said that the alleged wrongful act of detention repeats itself everyday even after the complainant was produced before the Magistrate and remand was obtained in accordance with law. Beyond 3-4-1994, there was no breach of obligation imposed by law either by means of positive or passive conduct of the alleged wrongdoers. To characterize it as a continuing wrong is, therefore, inappropriate. One-year period for taking up the enquiry into the complaint, therefore, comes to an end by 3-4-1995. Just as in the case of Section 473 CrPC, there is no provision in the Act to extend the period of limitation of one year. However, in the procedural Regulations framed by the Commission a certain amount of discretion is reserved to the Commission. Regulation 8(1) (a) inter alia



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lays down that "ordinarily" a complaint in regard to events which happened more than one year before the making of the complaint is not entertainable".

The above judgment would clearly show that the first respondent lacks jurisdiction to take cognizance of the offence as it is hit by Section 36(2) of the Human Rights Act.

(ii) In the case of **M.Mahendran and Others v. K.A. Anthony and Others**, reported in **2011 (1) CTC 320**, wherein, the relevant Paragraph No.4 of the order is extracted hereunder:-

4.Placing reliance on the said Section, during the course of arguments the learned Counsel appearing for the petitioners would strenuously argue that the alleged incident of violation of human rights took place on 13.09.2004 and within one year i.e., by 13.09.2005, the Commission ought to have instituted the enquiry, but the Commission has chosen to issue summons only on 16.08.2007 and therefore, the enquiry, said to be conducted by the Human Rights Commission, is wholly without jurisdiction and void ab-initio. It has further been argued by the learned Counsel for the petitioners that under Section 18 of the Act, the Commission has powers to recommend to the concerned government or authority to initiate proceedings for prosecution or such other action as the Commission may deem fit against the



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concerned person or persons and the Petitioners are public servants and were on duty at the relevant point of time when the alleged violation of human rights is purported to have been taken place and the Commission is also invested with powers to conduct an investigation before the institution of enquiry and the said recommendation have serious consequences and hence the provisions of Section 36(2) of the Act will have to be construed strictly and the Commission does not have plenary powers to substitute statutory restrictions.

(iii) In the case of **Mohmed Juned Shamsuddin Saiyed and Ors v. K.C. Kapoor and Ors**, reported in **2006 SCC Online Gujarat 189**, wherein the relevant Paragraph is extracted hereunder:-

"43. In its conclusion arrived it after appreciating the fact and evidence on record of the case, the Hon'ble Supreme Court has observed in that case that as there is no clear or incontrovertible evidence about the custodial torture, nor any medical report of any injury or disability, and as the grievance of the petitioner and his relatives is against different officers in different police stations at different points of time, more importantly, several of the allegations are proved to be exaggerated and false, the Court did not consider the said case to be a fit case for award of compensation. The Court further observed that all reliefs which should



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be granted in such a case, have already been granted by ordering an inquiry by CBI and ensuring that the police officers named are prosecuted. The law will have to take its own course."

As rightly held, based on mere bald statements, false and frivolous allegations, which are self-serving in nature, the Court cannot be persuaded to take action against the Police personnel, who are discharging their duties to unearth the crime.

(iv) In the case of **Daniel Fernando v. State Human Rights Commission and Ors** reported in, **2022 SCC Online Madras 8004** wherein, the relevant paragraphs which is extracted hereunder:-

"The complaint filed by the petitioner before the Human Rights Commission has been rejected on the ground that it could not be entertained as it is filed beyond the time granted under Section 36(2) of the Protection of Human Rights Act, 1993.

2.Mr.T. Ramachandran, learned counsel appearing for the petitioner would submit that he had no knowledge of filing of the FIR. Therefore, time would begin to run only from the date on which he had the knowledge of violation.

3.We are unable to concur. There is no power vested in the commission to condone the delay. Section



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36(2) of the Protection of Human Rights Act creates an embargo on the Human Rights Commission to entertain complaints which are filed after lapse of an year from the date of alleged violation. The provisions reads as follows:-

---(2) The Commission or the State Commission shall not inquire into any matter after the expiry of one year from the date on which the act constituting violation of human rights is alleged to have been committed.

4. In view of the above clear language of the provision, we do not think that we can accept the arguments of the learned counsel for the petitioner that time will begin to run from the date of knowledge of violation. Therefore, we see no merits in this writ petition.

In all the above judgments, it was held that the first respondent lacks jurisdiction to take cognizance of any complaint not made within a period of one year from the date of occurrence. As per the available materials on record, the occurrence took place in the year 1996 and cognizance has been taken in the year 2000. It is a clear case that SHRC/the first respondent lacks jurisdiction to take cognizance of the complaint.

24. It is seen from the pleadings of the second respondent and the Writ Petitioners that the second respondent/complainant had made allegations as against the Writ Petitioner P.K.Manimandram that in the year 1996 he assumed office by way a transfer and immediately



thereafter, the said P.K.Manimandram started making advances towards the second respondent herein.

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25. The second respondent/complainant though has made complaint before the first respondent/SHRC alleging that the Writ Petitioner P.K.Manimandram had made advances towards her, however, ever since 1996, she has not made any complaint to the higher officials, only on 27.02.1999 she made a representation to the Director General, ICAR regarding the alleged sexual advances made by the Writ Petitioner in W.P.No.8516 of 2001.

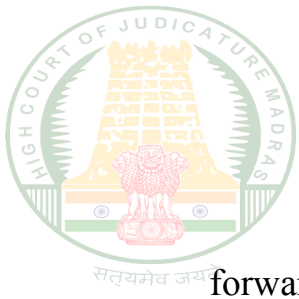
26. There was no complaint as against the Writ Petitioner P.K.Manimandram to any Police officials or any other Authority prior to 1999 the complaint to the Director General, ICAR in the year 1999 looks like after thought. The second respondent had maintained complete silence till 1999. It is clear that the Writ Petitioner P.K.Manimandram had only forwarded a community certificate of the second respondent for verification, which was contested by the second respondent by way of three Writ Petitions on different grounds apart from challenging her dismissal before the Central Administrative Tribunal.



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27. Though the second respondent had succeeded in all the Writ Petitions as well as in the Central Administrative Tribunal, it is a statutory right conferred on the person aggrieved by an order passed by the Authority. Such exercise of power and succeeding as against the order passed by the Authority does not mean that the Writ Petitioner P.K.Manimandram had exceeded his limits. The act of the Writ Petitioner P.K.Manimandram is only verification of the genuineness of the community certificate produced by the second respondent herein, through which her employment was confirmed.

28. In the absence of community certificate being verified by the Competent Authority based on which her employment rests upon, it is incumbent on the Writ Petitioner P.K.Manimandram to find out the genuineness of the community certificate of the second respondent. This Court has no hesitation to hold that in the absence of any complaint ever since 1996 as against the Writ Petitioner P.K.Manimandram till the complaint before Director General, ICAR on 27.02.1999 and before the first respondent/SHRC on 13.10.2000, the cognizance taken by the first respondent/SHRC is without jurisdiction as contemplated under Section 36(2) of the Protection of Human Rights Act, 1993.



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29. We are aware that the Writ Petitioner Dr.G.R.M.Rao has only forwarded the complaints or forwarded the community certificate for verification, which is nothing but his official work. Discharging an official work will not amount to violation of human rights. In the absence of any specific allegation against the Writ Petitioner Dr.G.R.M.Rao, we are unable to see that there is an iota of material of human rights violation against the Writ Petitioner Dr.G.R.M.Rao.

30. We are also aware that the Writ Petitioner Ra.Sushil Kumar has registered the FIR in Crime No.7 of 98 based on the complaint received by the Official Authority and he has registered a case. The Hon'ble Supreme Court in Civil Appeal No.556 of 97 has observed that *“the Collector sent the original community certificate to the police authorities for investigation. There was no reason for the High Court to stop this investigation.”* Therefore such a registration of FIR and effecting the arrest is a prerogative right of the Investigating Officer who has filed the present Writ Petition in W.P.No.6857 of 2001 stating that such an arrest is not a human rights violation and such a contention cannot be acted upon. The second respondent/complainant has not shown any material to show that there was a human rights violation by the Writ Petitioner in W.P.No.6857 of 2001. For discharging his official



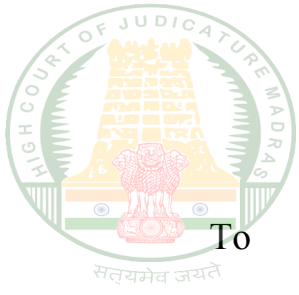
duty, one cannot be put to challenge that it would be a violation of human rights.

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31. For the foregoing reasons, all the Writ Petitions are allowed and consequently, the order passed by the State Human Rights Commission is set aside. No costs.

(S.S.S.R.,J) (N.S.,J)
29.04.2024

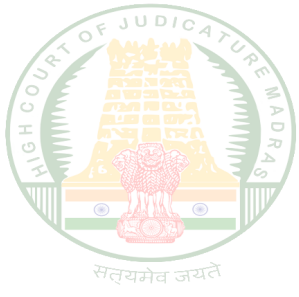
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Speaking order:yes/no
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To

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The Secretary,
State Human Rights Commission,
Tamil Nadu,
Justice Pratap Singh Malligai,
No.35, Thiru-vi-ka Salai,
Royapettah, Chennai – 600 014.



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VERDICTUM.IN



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