



W.P.Nos.22431 and 22527 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on 15.11.2022	Delivered on 29.11.2022
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THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

AND

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

Writ Petition Nos.22431 and 22527 of 2021

and

W.M.P.No.23750 of 2021

W.P.No.22431 of 2021:

L.Muruganantham

.. Petitioner/ party-in-person

Vs.

1.The State of Tamil Nadu represented by its,
Additional Chief Secretary to Government,
Homes Department, Secretariat,
Fort St. George, Chennai – 600 009.

2.P.Karthikeyan, Sub Inspector of Police,
Dharapuram Police Station,
Dharapuram-638 656.

3.Superintendent of Prison,
Coimbatore Central Prison,
Coimbatore – 641 018.

4.State Human Rights Commission,
rep. by its Registrar,
No.143, P.S.Kumarasamy Raja Salai,
Chennai – 600 028.

..Respondents



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Prayer in W.P.No.22431 of 2021: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of Writ of Certiorarified Mandamus, to call for the entire records pertaining to the order in SHRC Case No.2745 of 2020 dated 27.08.2021 passed by the fourth respondent and quash the following in the said order dismissing the said complaint against the 3rd respondent herein and non cognizance of the complaint against 1st respondent herein and order partly not allowing the complaint against 2nd respondent herein and consequentially directing

i. 1st to 3rd respondents to provide compensation of Rs.50,00,000 (Fifty Lakh Rupees) to petitioner for all the human rights inflicted on petitioner.

ii. 1st respondent to comply with Rights of Persons with Disability Act, 2016 and United Nation Conventions of Rights of Persons with Disability with respect to Police and Prison Departments in the State of Tamil Nadu.

W.P.No.22527 of 2021:

P.Karthikeyan

... Petitioner

Vs.

1.The Principal Secretary of Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George,
Chennai – 600 009.



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2.The State of Tamil Nadu,
Represented by its Additional Chief Secretary of Government,
Home Department, Secretariat, Fort St.George,
Chennai – 600 009.

3.The Registrar,
State Human Rights Commission – Tamil Nadu,
No.143, P.S.Kumarasamy Raja Salai,
Greenways Road, Chennai – 600 028.

4.The Superintendent of Prison Coimbatore,
Coimbatore Central Prison, Coimbatore – 641 018.

5.L.Muruganantham

... Respondents

Prayer in W.P.No.22527 of 2021: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of Writ of Certiorari, calling for the records of the 3rd respondent in SHRC No.2745/2020 dated 27.08.2021 and to quash the same.

For Petitioners : Mr.L.Muruganantham, Party-in-person
Petitioner in W.P.22431/2021
R5 in W.P.22527/2021
Mr.P.Palaninathan, for petitioner in
WP 22527/2021 & R2 in WP 22431/21

For Respondents : Mr.A.Selvendiran,
Special Government Pleader
for R1 in W.P.No.22431/2021
for R1, 2 and 4 in W.P.No.22527/2021
Mr.T.Balaji for R4 in W.P.22431/2021
for R3 in W.P.22527/2021



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COMMON ORDER

(Order of the Court was delivered by R.SUBRAMANIAN, J.)

Challenge in both the Writ Petitions is to the order of the State Human Rights Commission dated 27.08.2021, upholding the claim of the petitioner in WP 22431 of 2021 that the action of the second respondent in arresting him in violation of the guidelines of the Hon'ble Supreme Court in ***Shri D.K. Basu -vs- State Of West Bengal and Ashok K. Johri -vs-State Of U.P.***, reported in ***1997 (1) SCC 416***, and in ***Arnesh Kumar v. State of Bihar and another***, reported in ***(2014) 8SCC 273***, amounts to violation of Human Rights and directing payment of compensation of Rs.1,00,000/- to the petitioner in WP 22431 of 2021.

2. While the petitioner in WP No.22431 of 2021 would claim more compensation, the petitioner in the other Writ Petition, viz., WP No.22527 of 2021 would contend that there was no human rights violation, the arrest was just and proper and as such the order of the State Human Rights Commission, imposing penalty and a further direction to take disciplinary proceedings against him are not justified. Since the order under



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challenge in the both the Writ Petitions is one and the same, the Writ Petitions are heard together and disposed of by a common judgment.

3. The case of the petitioner in WP 22431 of 2021 is that he is a physically challenged person affected with Becker's Muscular Dystrophy which is a progressively worsening locomotive disability. As per the assessment made in the year 2020, the extent of disability of the petitioner is about 80%. He has also been certified to be a physically disabled person entitled to protection under the Rights of Persons with Disability Act, 2016. This being so, the second respondent in the said Writ Petition, who was the Sub Inspector of Police in Dharapuram Police Station at the relevant point of time, arrested him on 29.02.2020 at about 10.15 a.m. on the basis of a false complaint lodged by one K.Selvakumar, a henchman of the petitioner's paternal uncle Dhandapaani, in order to settle scores with him for a civil dispute that is pending in the Civil Court. Despite being a physically challenged person, the petitioner was harassed by the Police and was beaten up. He was also slapped by the second respondent.

4. It is the further claim of the petitioner that though he was taken



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into custody at 10.15 a.m., the time of his arrest was shown as 1.15 p.m.

when he was produced before the learned Magistrate. The petitioner would also allege that the learned Magistrate did not ask any question to him and recorded as if he has not made any complaint against the Police. He had recorded his protest even while receiving the order of remand. It is the further contention of the petitioner that the third respondent in the Writ Petition, viz., the Superintendent of Central Prison had not given him proper treatment as required by the Rights of persons with Disabilities Act, 2016, which according to the petitioner, amounted to Human Rights Violation on the part of the Jail Authority also. Therefore, the petitioner would contend that he is entitled to compensation and appropriate disciplinary action should also be taken against the erring officials. Claiming a damages of Rs.50,00,000/-, the petitioner approached the State Human Rights Commission by way of a complaint which was taken on file as SHRC Case No.2745 of 2020.

5. The claim of the petitioner was resisted by the respondents contending that the petitioner was not arrested at 10.30 a.m. as claimed. On 29.02.2020, according to the Police, information was received by the



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constable Mr.Suresh, from the Government Hospital that one Selvakumar son of Kittan has been admitted for treatment for certain injuries sustained by him during a altercation. The Police Constable went to the Government Hospital and recorded the statement of the complainant and registered a case under Sections 294B, 323 and 506(2) of the Indian Penal Code.

6. After investigation, the Sub Inspector of Police, the second respondent arrested the petitioner at around 1.15 p.m. on the same day and after completion of Medical Examination etc. the petitioner was produced before the Judicial Magistrate, Dharapuram, on the same day. Accepting the Remand Report, the learned Magistrate had remanded the petitioner to judicial custody for a period of 15 days. In the interregnum, the petitioner, who complained of illness was admitted to the Prison Hospital and he was staying only in the Prison Hospital till he got bail i.e. till 10.03.2020.

7. The State Human Rights Commission, upon examination of the rival contentions found that the arrest of the petitioner, who is a physically disabled person by itself was in violation of the guidelines laid down by the Hon'ble Supreme Court in *Arnesh Kumar v. State of Bihar*. The



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Commission also pointed out that the defence of the second respondent in

WPNo.22431 of 2021 that the petitioner was arrested early at 1.15 on the day is quite unbelievable. The Commission also found that the second respondent, viz. The Sub Inspector of Police had not adverted to the guidelines issued by the Hon'ble Supreme Court from time to time regarding arrest. The Commission, however, did not accept the contention of the petitioner that the Human Rights violation continued in the prison also. On the basis of the prison records, the Commission concluded that the petitioner was admitted in the prison dispensary and was given proper treatment.

8. On the said finding, while upholding the claim of the petitioner regarding Human Rights Violation against the second respondent, viz. the Sub Inspector of Police concluded that there was no human right violation in the prison and hence the prison official, namely the third respondent in WP 22431 of 2021 could not be made liable for any violation of Human Rights. The Commission quantified the damages at the bare minimum of Rs.1,00,000/- and directed the State Government to pay the same to the petitioner with an option to recover from the delinquent employee, viz. the



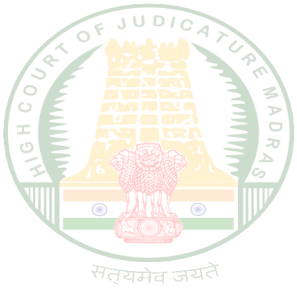
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second respondent in WP No.22431 of 2020.

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9. Aggrieved by the conclusion that the prison authorities were not liable for any human right violation and as well as the quantum of the compensation, the complainant before the State Human Rights Commission has come up with WP No.22431 of 2021. Claiming that there was no human rights violation and the Commission has wrongly reached the said conclusion, the second respondent before the State Human Rights Commission in SHRC No.2745 of 2020 has come up with WP No.22527 of 2021.

10. We have heard the petitioner in WP No.22431 of 2021 who is also the fifth respondent in WP No.22527 of 2021 in person, Mr.Selvendran, learned Special Government Pleader appearing for the respondents 1 and 3 in WP No.22431 of 2021 and respondents 1, 2 and 4 in WP No.22527 of 2021, Mr.T.Balaji, learned counsel appearing for the fourth respondent in WP 22431 of 2021 and the third respondent in WP 22527 of 2021 and Mr.P.Palaninathan, learned counsel appearing for second respondent in WP 22431 of 2021 and the petitioner in WP No.22527 of 2021.



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11. Mr.Muruganantham, the petitioner in WP No. 22431 of 2021 would contend that a reading of the FIR itself would show that it is a case created by his paternal uncle Dhandapaani with the help of the Police to somehow threaten him and grab his properties. He would claim that the very registration of FIR, his arrest and the consequent incarceration is at the instance of his paternal uncle Dhandapaani, who is very influential, to make him part with his property. It is the further contention of the petitioner that Dhandapaani, who runs an Educational Institution, is very powerful in the locality and he had planted this Selvakumar, the complainant who lodged a complaint against the petitioner to enable the Police to arrest the petitioner and harass him and his mother. The petitioner's father Lingusamy was murdered and his paternal uncle Mr.Dhandapaani, is attempting to threaten the petitioner and his mother to part with their properties in his favour.

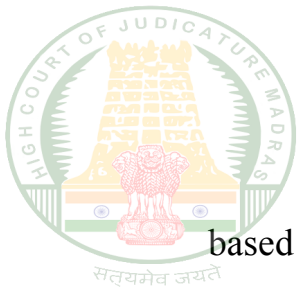
12. This entire episode of complaint and arrest are stage managed by the said Dhandapaani to ensure the petitioner obeys his dictates. Taking us through the contents of the FIR that was registered on 29.02.2020, when the petitioner was arrested, he would contend that no cognizable offence has



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been made out. Except the offence under Section 506 (2) of the Indian Penal Code, the other offences that were complained of are Sections 294B and 323 which are non-cognisable offences. Even with reference to the other offence, viz. Section 506 (2), the only statement of the accused is that he had taken the weapon, namely the bill hook used for harvesting grass to be used as fodder for cattle and claimed that he would finish off the complainant and he had dropped the bill hook in the same place upon seeing the witnesses approaching them. This according to the petitioner is a wholly unbelievable theory which has been gobbled up by the Police in tandem with the paternal uncle Dhandapani only to provide for a cause to arrest and harass him.

13. The State Human Rights Commission upon a perusal of the FIR and the statements of the witnesses made under Section 161 of the Code of Criminal Procedure, had come to the conclusion that the Police Officer, viz. the Sub Inspector of Police had not applied his mind as to whether arrest is required or not. The fact that the petitioner is a disabled person was not taken into account and the petitioner was treated as any other ordinary person. The very arrest, according to the State Human Rights Commission,



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based on the allegations contained in the FIR was fully unnecessary and the Sub Inspector of Police had not followed the directions issued by the Hon'ble Supreme Court regarding arrest in its judgment in ***Arnesh Kumar v. State of Bihar***.

14. Upon such finding, the State Human Rights Commission held the Sub Inspector of Police guilty of violation of Human rights and slapped a fine of Rs.1,00,000/-. Adverting to the case against the Jail Officials, the State Human Rights Commission found that the jail officials could not be held guilty of violation of human rights, since they have referred the petitioner to the Jail Hospital where he was given proper treatment and he was kept in jail hospital with proper facilities during the period of his incarceration. Admittedly, the petitioner was released on bail on 10.03.2020.

15. Mr.Muruganantham would however, contend that being a disabled person, particularly with Becker's Muscular Dystrophy, he should have been given special protein diet and physiotherapy in the Jail. According to him the failure on the part of the Jail Authorities to provide such treatment and appropriate food would by itself amount to violation of



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Human Rights. As far as the arrest is concerned, he would contend that upon concluding that the Police is guilty of violation of Human rights, the Commission erred in imposing a meagre fine of Rs.1,00,000/-. According to him, considering the fact that he is disabled person, the Commission should have imposed much higher penalty.

16. Contending contra, Mr.Palaninathan, learned counsel appearing for the second respondent, namely the Sub Inspector of Police would contend that all formalities prescribed in *Shri D.K. Basu, and Arnesh Kumar*, by the Hon'ble Supreme Court were followed while arresting the petitioner. Within a few hours of his arrest, the petitioner was produced before the learned Magistrate and he did not make any complaint to the learned Magistrate regarding the ill-treatment. Having failed to make any complaint to the learned Magistrate regarding ill-treatment, the petitioner cannot now contend that there has been a Human Rights Violation.

17. Relying upon the Remand Report and the order of the Magistrate remanding the petitioner, the learned counsel appearing for the



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respondent would submit that if only the petitioner had been either beaten up or harassed by the Police, he would have stated so before the learned Magistrate when he was questioned by the learned Magistrate at the time of remand. The very fact that no such complaint was made and the learned Magistrate had recorded that there was no complaint against the Police, the mere arrest and remanding a person to the judicial custody would not amount to violation of Human Rights.

18.Mr.Selvendran, learned Special Government Pleader appearing for the respondents 1 and 3 would submit that the Police had followed all directions of the Hon'ble Supreme Court and there has been no violation of Human Rights in the case on hand. He would also seek to rely upon the order of the learned Magistrate made while remanding the petitioner. He would point out that the order discloses that the petitioner did not complain of any ill-treatment to the learned Magistrate. As regards the Jail Authorities are concerned, the Reports of Jail Authorities have been placed before us to show that the petitioner was accommodated in the Jail Hospital for almost 9 out of the 10 days when he was inside the Prison. Therefore, according to the learned counsel there was no violation of Human Rights.



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19. We have considered the rival submissions.

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20. We have gone through the FIR Registered. The very allegations in the FIR appear to be so unnatural and as a consequence of it, this Court had quashed the FIR also in CrI. OP. No.19291 of 2021. All that has been alleged in the FIR is that there was a dispute with reference to tethering cattle in the land that belonged to the petitioner's father and his brother Dhandapaani. The complainant had stated that questioning his action of tethering cattle in the disputed land, the petitioner hit him and pushed him down because of which he suffered a contusion in the back. The mother of the petitioner, who was harvesting fodder with a bill hook had assaulted him with hand in the right wrist. When the witnesses approached the petitioner, the petitioner had taken the bill hook from his mother and threatened to kill him. These allegations have been found to be wholly insufficient to support the lodging of an FIR under Sections 294B, 323 and 506 (2) of the Indian Penal Code.

21. This Court while quashing the FIR has observed that none of the ingredients of any of the offences has been made out. We also find that the very FIR is so unnatural that it states that the petitioner after threatening



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the complainant with the bill hook dropped it in the scene of occurrence and left the place. It has been established beyond doubt that the petitioner is a person suffering from Muscular Dystrophy, which is in degenerative physical condition. The Medical Certificates produced by the petitioner show that he has a physical disability of about 80%. Therefore it is humanly impossible for the petitioner to have attacked a well nourished male person, aged about 38 years.

22. Yet another circumstance which impels us to conclude that the FIR is not true, is the accusation against the mother of the petitioner, who was about 65 years old at the time of the occurrence, it states that the mother of the petitioner attacked the complainant on the right wrist with her hand and caused an injury. The Accident Register that has been filed shows that the complainant had suffered a simple injury. The Accident Register, however, records that there is a stab injury in the right forearm, there is no supporting act to establish the cause of the stab injury. The persons who had allegedly seen the crime had given their 161 Statements, which are parrot like repetitions of the First Information Report. It is an admitted case that there are some previous disputes between the paternal uncle

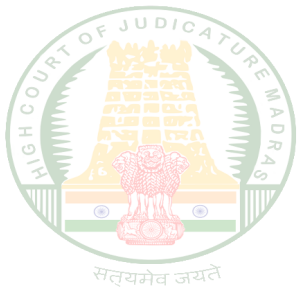


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Dhandapaani and the petitioner. In fact the petitioner had lodged a complaint against the said Dhandapaani which has been referred as a mistake of fact, after enquiry. While quashing the FIR, this Court had held that there cannot be any prosecution based on the said FIR.

23. Be that as it may, the Hon'ble Supreme Court has time and again reiterated that arrest is an extreme step and the Police Officers should exercise the discretion and examine whether arrest is required or not, since it brings humiliation, curtails freedom and casts scars forever. While the Hon'ble Supreme Court laid down various guidelines to be followed while arresting an individual in ***D.K.Basu's*** case, it came down heavily on casual arrest by the Police without really examining as to whether an arrest is inevitable in ***Arnesh Kumar v. State of Bihar and another***, reported in ***(2014) 8SCC 273***. If ***D.K.Basu v. State of West Bengal***, reported in ***1997 (1) SCC 416***, is taken to set out the guidelines after arrest ***Arnesh Kumar v. State of Bihar and another***, imposes an obligation on the part of the Police Officer to examine whether an arrest is essential. While doing so, the Hon'ble Supreme Court observed as follows:

“(6) *Notice of appearance in terms of Section 41A of*



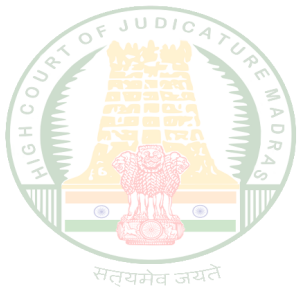
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Cr.P.C. be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the District for the reasons to be recorded in writing;

(7) Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before High Court having territorial jurisdiction.”

24. We find that such an exercise has not been carried out in the case on hand. We must also point out that the Police Officer, viz. the Sub Inspector of Police, the second respondent in WP No.22431 of 2021, who was present in Court before us, replied in negative to a specific query by the Court as to whether he had read the judgment in ***Arnesh Kumar v. State of Bihar and another***. Startled by the said reply, we had required the counsel for the Director General of Police, Tamil Nadu to produce the circulars that had been issued by his office to his subordinates regarding the judgment in ***Arnesh Kumar v. State of Bihar and another***.

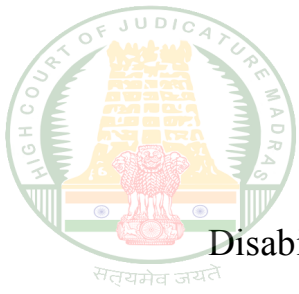


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25. We find from the said circulars that instructions had been issued to the Subordinate Officers and Station House Officers periodically inviting the attention of the officers to various decisions of this Court and the Hon'ble Supreme Court containing specific directions regarding arrest. We find that a circular has been issued even as early as on 04.04.2012, pointing out that the provisions of the Code of Criminal Procedure and the directions issued by this Court with reference to arrest of individuals. The Hon'ble Supreme Court has also pointed out that the contents of the Remand Report cannot be mechanical. We have examined the Remand Report in the case on hand, wherein it is stated that the other accused, viz., the mother of the petitioner is absconding and arrest and remand to judicial custody is necessary to prevent him from engaging in further crimes. It is very clear that this Remand Report is a mechanical reproduction of the requirement of law.

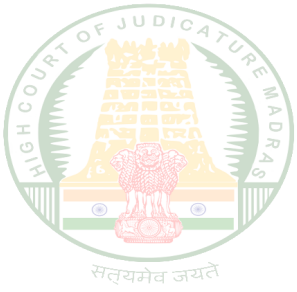
26. It is unfortunate that the learned Judicial Magistrate has also mechanically remanded the petitioner to judicial custody. It will be pertinent to advert to the provisions of the Rights of Persons with



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Disabilities Act, 2016 at this juncture, since we are dealing with a case of a person, who has been certified to suffer from a degenerative congenital disorder. Muscular Dystrophy is a very serious degenerative disorder which requires continuous treatment as well as physiotherapy. If a person suffers from locomotive disabilities, there is a possibility of him/her becoming totally bedridden, if proper care is not given.

27. The Rights of persons with Disability Act, 2016, is an enactment brought in with the avowed object of providing such facilities to persons in need of care. The Act imposes an obligation on the part of the State to educate persons in charge of enforcement of law, particularly the Police Force by conducting training programmes to sensitize its members of the rights of persons with disabilities. To a specific query from the petitioner regarding conduct of training programmes as required by the Rights of Persons with Disabilities Act, 2016, the person in charge of the Police Training College has replied in negative to the effect that no such training is imparted to the Police Officials by the Police Training College.



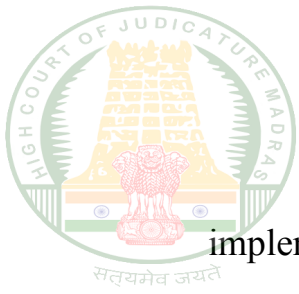
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28. Section 39 of the Rights of Persons with Disabilities Act,

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2016, imposes an obligation on the Government to conduct sensitization programmes and awareness campaigns to ensure that the Rights of Persons with Disabilities provided under the Act are protected. To our dismay, we find that there is not enough done by the Government to achieve the objects of the enactment which had been enacted even in the year 2016. Though the enactment contains several measures to be taken by the appropriate Governments to protect the rights of the disabled persons, very little is being done to implement the provisions of the enactment. The very fact that no training or no sensitization programme has been held by the appropriate Government, as required under Section 39, shows that there has been callous indifference in implementing the provisions of the Act. Even on implementation of the directions of the Hon'ble Supreme Court with reference to arrest of individuals, we find the situation is no better.

29. The very fact that a Police Inspector replies in negative to the query by the Court, as to whether, he had read the judgment in *Arnesh Kumar v. State of Bihar and another*, shows that nothing beyond issuance of circulars has been done by the Department in the direction of



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implementing the orders of the Hon'ble Supreme Court. When the Hon'ble Supreme Court had come down heavily upon the Police force for indiscriminate arrest, the Chiefs of the State Police Force are required to ensure that the message reaches every Constable of the Police Force. An ignorant Police Force is as good as one not existing.

30. There is nothing on record to show that some kind of effort was taken at the level of at least the Superintendents of Police at the Districts and the Commissioners of Police in City Corporations to sensitize the force regarding the pronouncement of the Hon'ble Supreme Court particularly with reference to arrest and detention. The fact that there are several judgments pointing out the excesses by Police would show that no proper care is taken to keep the Police Force informed about the happenings. Much has been said about the low percentage of conviction even that is largely due to the defects in the prosecution.

31. Yet another factor which crops up in the case on hand is the casual manner in which replies have been given to the queries under the Right to Information Act by the Police Department. The petitioner had



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sought for certain information regarding the CCTV footage from the Police

Station concerned viz., the Dharapuram Police Station to which a reply is

sent stating that since the Police Station was demolished for construction of

a new Police Station during the relevant period, there was no cameras

installed in the said Police Station. While this reply dated 28.07.2021 is by

the Additional Superintendent of Police, Head Quarters, Tirupur District,

there is another reply by the Inspector of Police, Dharapuram Police Station

stating that the Dharapuram Police Station was functioning from the All

Women Police Station, temporarily during the relevant period and the

CCTV Cameras situate in the All Women Police Station were not

functioning during the said period. This reply prompted us to seek a Report

from the Director General of Police regarding installation of CCTV

Cameras and persons responsible for their functioning. This has evoked

lukewarm response from the office of the Director General of Police. A

Memorandum dated 01.08.2022 has been produced including copies of

letters of the Joint Secretary to the Government of India requiring CCTV

Cameras to be installed in all Stations and emphasizing the need to conduct

periodic audit of all the CCTV Cameras installed in Police Stations.



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32. Another letter which has emanated from the Office of the

Director General of Police addressed to the Additional Chief Secretary to Government, Home has also been produced seeking funds for replacement of CCTV Cameras and instruments. We are constrained to record our total dissatisfaction and disenchantment with the current state of affairs. It is high time that the Police force pulls up its socks and keeps pace with developing technology.

33. Adverting to the facts of the case on hand, we find that there is no proper explanation for the need to arrest the petitioner who is a physically disabled person. The reply given by the Station House Officer in its proceedings dated 15.07.2021 shows that the Police were alive to the fact that the petitioner is a physically disabled person. A Doctor has also examined the petitioner on 29.02.2020, i.e. the date of his arrest and the proforma shows that the fact that the petitioner is suffering from Becker's Muscular Dystrophy has been recorded by the Doctor. We find that arrest/ Court surrender Form that has been signed by the Second respondent Sub Inspector of Police has many columns left blank. These records would show that there has been total non-application of mind in the matter of arrest of



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the petitioner. Curiously in the reply to the RTI queries by the petitioner, the

Station House Officer of Dharapuram Police Station has stated that the Enquiry Officer, viz. the second respondent had felt that the petitioner would misuse the status as a disabled person to threaten the witnesses. To another query, the Station House Officer has stated that because the petitioner is an Advocate and a physically disabled person, he would avoid appearing in the Court. These reasons, in our considered opinion, are wholly unsustainable. We therefore, agree with the conclusion of the State Human Rights Commission that there has been a Human Rights Violation in the matter of arrest of the petitioner.

34. It is claimed by the petitioner that he was not treated properly in the Jail and proper food that he should get, being a disabled person was not given to him. It is also contended that he requires regular physiotherapy which was denied to him for the entire period of his incarceration. No doubt, we find that the petitioner is justified to a certain extent in his contentions that proper treatment and proper food was not given to him when he suffered incarceration for about 10 days. But, if we are to pose a question as whether that would by itself amount to a Human Right



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Violation, the answer would be negative. It is seen from the Jail records that had been produced, the petitioner was always in the Jail dispensary and certain special amenities were provided to him as a physically disabled person. Special diet which includes milk was supplied to him. Mere non-provision of certain amenities which would amount to a statutory violation may not strictly amount to Human Rights Violation. While arrest and incarceration of the petitioner could be said to be a Human Rights Violation, the non-provision of certain amenities or treatment during a short period of incarceration, in our opinion, will not amount to a serious human rights violation. We therefore find that there was no human rights violation by the Jail Authorities.

35. The next question that is to be addressed is the adequacy of the compensation. On an overall examination of the background facts, the nature of the complaint, the injuries sustained by the complainant, the action of the Police Officer and the subsequent conduct on the part of the Station House Officer, Dharapuram Police Station in attempting to justify the conduct would show that they were always alive to the fact that the petitioner is a physically handicapped person suffering a locomotive



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disability, which is highly degenerative to an extent of almost 80%. It is

also clear that the directions of the Hon'ble Supreme Court in *Arnesh*

Kumar v. State of Bihar and another, have been given a complete go by

and unfortunately, the Sub Inspector of Police who arrested the petitioner

had not even read the judgment in *Arnesh Kumar v. State of Bihar and*

another, which was rendered as early as in 2014. The circulars issued by

the Police Headquarters have also been not followed in the matter of arrest

of the petitioner.

36. A cumulative effect of all these acts and omissions, in our opinion, would certainly amount to violation of Human Rights of the petitioner. We also take note of the fact that no proper training or sensitization programme has been held as required under Section 39 of the Rights of Persons with Disabilities Act, 2016. When the Hon'ble Supreme Court has clearly pointed out that a Police Officer who has the power to arrest and detain a person must be extremely careful in exercising such power and he must exercise his discretion and decide whether arrest is absolutely necessary or not. In fact, the Hon'ble Supreme Court has said so while dealing with a case of a person without any disability. The



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responsibility of the Police Officer handling a physically disabled person is

much more, he /she should be doubly careful and exercise more restraint while handling a physically disabled person. Evidently, there has been some excess, unfortunately the learned Magistrate has also mechanically remanded the petitioner. We are of the opinion that the petitioner is justified in contending that the compensation that has been awarded to him is on the lower side. A physically disabled person is definitely entitled to a better treatment and denial of such better treatment by itself would amount to a Human Rights Violation. If the Police Officers despite knowledge of the fact that they are dealing with a physically disabled person behave in inhumane manner and arrest such person with a certain illegal object in mind, the action of the Police Officer should not only be condemned, but he should also be penalised for such behaviour.

37. The very casual manner in which the officer replied to our query, as to whether, he had read the judgment in *Arnesh Kumar v. State of Bihar and another* shocks us. Such replies will reflect upon the entire Police Force. We are constrained to point out that the compensation awarded by the State Human Rights Tribunal at Rs.1,00,000/- is wholly insufficient

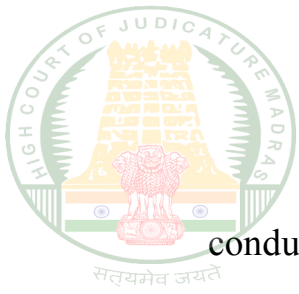


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and we enhance to Rs.5,00,000/-. We further direct that the enhanced compensation of Rs. 4,00,000/- shall be borne by the State as we find that there has been several acts of commissions and omissions by the Police Department for which the 2nd respondent alone cannot be held liable. The other directions of the State Human Rights Commission relating to recovery of the penalty of Rs.1,00,000/- from the 2nd respondent and the direction to take disciplinary action against the second respondent in WP No.22431 of 2021 would stand.

38. In fine WP No.22431 of 2021 will stand partly allowed to the extent indicated above and WP. No.22527 of 2021 will stand dismissed. We also award cost of Rs.25,000/- to the petitioner payable by the State.

39. Before parting with this case, considering the material that has been placed before us, we feel it is necessary to issue directions to the State Government to effectively implement the provisions of the Rights of Persons with Disabilities Act, 2016. There will be a direction to the Additional Chief Secretary to Government of Tamil Nadu, Home Department to ensure that the District wise Sensitization programmes are



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conducted for Police Officers including Constables regarding the Rights of

Persons with Disabilities. Such programmes shall be so designed that they throw enough light on the provisions of the enactment and the intendment of the legislation. Guidelines should also be issued to the Police Officers as to how they should handle such physically disabled persons. Similar guidelines are also to be issued to the Government Doctors who come across such physically disabled persons who run into conflict with law and brought before them for medical examination. We remind the State that a statutory duty has been cast upon it by the provisions of the Rights of Persons with Disabilities Act 2016, to ensure that such persons live with dignity.

40. We also express our total dissatisfaction with the casual manner in which replies are being given to the queries made under the Right to Information Act by the Police Officers. While one reply states that the Police Station was demolished and therefore cameras are not available, the other states that though the Police Station was functioning from another Police Station, the cameras there were not working.

41. The Hon'ble Supreme Court has made it clear that each and



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every Police Station should be covered by CCTV Cameras and the Central

Government has also issued instructions to each State Government regarding fixation of CCTV Cameras in all the police stations. The responsibility does not end with fixing of Cameras alone, it should be ensured that they are working. The saying that prevention is better than cure would equally apply to the Police Force also. Therefore, the Police force should be alive to the fact that it is under constant watch or supervision of the Higher Officials. That awareness alone would considerably prevent abuse of powers. Therefore, the very presence of CCTV Cameras which are working would be a very strong deterrent against misbehaviour.

42. We therefore direct the Director General of Police to take steps to have a periodical inspection of the CCTV Cameras in all Police Stations and ensure their functioning. In order to achieve this, the Director General of Police is required to make a District Level Officer in-charge of ensuring the functioning of CCTV cameras in certain number of Police Stations in the District and such Officers will be responsible for maintenance of the Cameras and if there is a failure on his part, he should be held accountable for such failure. This effort if taken, will go a long way in curing the



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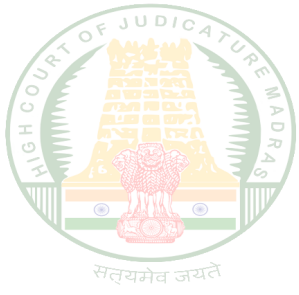
malady of non-functioning CCTV Cameras. We hope that the above directions would be complied with in their letter and spirit in the interest of the Police Force itself. Consequently, the connected miscellaneous petition is closed.

(R.SUBRAMANIAN, J.) (K.KUMARESH BABU, J.)
29.11.2022

Index: Yes
Internet: Yes
speaking order
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To

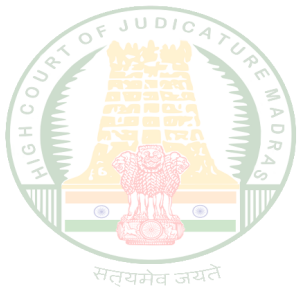
- 1.The Additional Chief Secretary to Government,
State of Tamil Nadu,
Homes Department, Secretariat,
Fort St. George, Chennai – 600 009.
- 2.Superintendent of Prison,
Coimbatore Central Prison,
Coimbatore – 641 018.
- 3.The Registrar,
State Human Rights Commission,
No.143, P.S.Kumarasamy Raja Salai,
Chennai – 600 028.



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4. The Principal Secretary of Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George,
Chennai – 600 009.
5. The Additional Chief Secretary of Government,
State of Tamil Nadu,
Home Department, Secretariat, Fort St. George,
Chennai – 600 009.
3. The Registrar,
State Human Rights Commission – Tamil Nadu,
No.143, P.S.Kumarasamy Raja Salai,
Greenways Road, Chennai – 600 028.
6. The Superintendent of Prison Coimbatore,
Coimbatore Central Prison,
Coimbatore – 641 018.



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R.SUBRAMANIAN, J.

and

K.KUMARESH BABU, J.

(jv)

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and

W.M.P.No.23750 of 2021

29.11.2022