

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Case:- OWP No. 120/2008
IA No. 153/2008

Mohd. Farooq Khan & Ors

.....Appellant(s)/Petitioner(s)

Through: Ms. Garima Gupta, Advocate

Vs

State Human Rights Commission & Ors

..... Respondent(s)

Through: Ms. Sugandh Sharma, Assisting Counsel vice
Ms. Monika Kohli, Sr. AAG for R-1,3 to 5
None for R-2,6 & 7

**Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE**

JUDGMENT
(12.12.2024)

(ORAL)

- 01.** In terms of the order dated 08.10.2024, the notice was issued to respondent Nos. 6 and 7 through publication published in the news paper "State Times" in its edition dated 12.10.2024, however, despite the aforesaid substituted service done through publication, nobody has put in appearance on behalf of respondent Nos. 6 and 7. The respondent Nos. 6 and 7 are, therefore, set *exparte*.
- 02.** We have heard learned counsel for the parties and perused the record.
- 03.** Impugned in this petition filed by the petitioners invoking extraordinary jurisdiction of this Court vested under Article 226 of the Constitution of India is an order dated 10.01.2008 passed by the respondent No.2-the then State Human Rights Commission, whereby the respondent No.2 has

recommended payment of ₹1.00 lac as compensation to the respondent No.7 to be shared by all the petitioners. The respondent No.2 has also recommended that FIR No. 89/2006 under Section 330 RPC registered in the Police Station, Darhal be also taken to its logical end.

- 04.** Briefly put the facts leading to filing of this petition are that on 05.11.2006, respondent No.7 was brought to District Hospital, Rajouri in an injured condition. The person accompanying the respondent No.7 leveled allegation of torture against the then SHO Police Station, Darhal (petitioner No.1), SI Mohammad Bashir and some other unidentified police personnel of Police Station, Darhal. Upon preliminary investigation conducted by DySP DAR, Rajouri, it was found that respondent No.7 was arrested in FIR No. 71/2006 under Section 364 RPC of Police Station, Darhal and was put to sustained interrogation to ascertain his involvement with militants. The respondent stated before the Inquiry Officer that during his custody, he was subjected to torture by the petitioners.
- 05.** The DySP, DAR, Rajouri-the Inquiry Officer in his enquiry report recommended to SSP, Rajouri to register formal FIR to unearth the truth in the matter. On the recommendation of the Inquiry Officer, FIR No. 89/2006 under Section 330 RPC was registered at Police Station, Darhal and the investigation entrusted to Mohd Tufail Mir then posted in Police Station, Darhal. The Inquiry Officer enquired the entire matter, recorded the statements of prosecution witnesses u/s 161 Cr.PC and also obtained the medical opinion from the Medical Officer, who had examined the respondent No.7. The I.O concluded that the case of torture alleged against

the petitioners was not proved and prepared the closure report to be submitted to competent Court of law. The respondent No.7 perhaps was not satisfied with the investigation conducted by the police against the police personnel and therefore, approached the respondent No.2 through the residents of Darhal alleging his tortured at the hands of the petitioners.

- 06.** From the order of respondent No.2 impugned, it transpires that the respondent No.2 without summoning the petitioners and without affording them an opportunity to defend themselves passed the impugned order holding them guilty of subjecting the respondent No.7 to torture. It is this order of the respondent No.2 which is called in question before us.
- 07.** The official respondents have appeared and have virtually supported the assertions made by the petitioners in this petition. The official respondents have explained as to how they took cognizance of the complaint of the respondent No.7 and registered FIR No. 89/2006 under Section 330 RPC against the petitioners. The manner in which the investigation was conducted has also been explained. It is submitted by the official respondents that the Investigating Officer did not find any truth in the allegations of the respondent No.7 and thus recommended the closure of the case. The respondent Nos. 6 and 7 have not come forward to rebut the assertions made by the petitioners in this petition.
- 08.** From the above as also from the reading of the impugned order passed by the respondent No.2, it is evident that the petitioners have been condemned unheard. We have gone through the impugned order in its entirety but could not find anything even suggesting that the petitioners were ever put

on notice in the enquiry or they were given any opportunity to defend themselves. The investigation conducted by the I.O in FIR No. 89/2006 coupled with the medical opinion does not support the allegation of the respondent No.7 that he was tortured by the petitioners while he was in custody of the police in FIR No. 71/2006.

- 09.** We are aware that jurisdiction of the then State Human Rights Commission was not dependent upon the investigation, if any, conducted by the police into the allegations, however, before condemning the petitioners and imposing penalty upon them, it was incumbent upon the Commission to summon all the petitioners and provide them adequate opportunity of being heard. The impugned order of the Commission is, therefore, in violation of the principle of natural justice and cannot sustain. That apart on the self same allegations the police has conducted the investigation and admitted the case as not proved. However, that aspect has not been given due consideration by respondent No.2, more particularly, when the respondent Nos. 6 and 7 would have all the opportunity to lodge a protest petition once the closure report is proposed to be accepted by the competent Court of law. The respondent No.2 has, thus, failed to appreciate the matter in its true perspective and has, by an *exparte* order, imposed the penalty on the petitioners.
- 10.** For the foregoing reasons, we find merit in this petition and the same is, accordingly, allowed. The impugned order passed by the respondent No.2- State Human Rights Commission is set aside. We could have sent back the case to the Commission for fresh consideration after providing opportunity

of being heard to the petitioners but we are told that the State Human Rights Commission does not exist. It is because of this reason, we are inclined to close the matter here. The closure report if not already filed before the competent Court may be filed and respondent No.7 if aggrieved shall have remedy under law.

11. Disposed of.

(PUNEET GUPTA)
JUDGE

(SANJEEV KUMAR)
JUDGE

JAMMU
12.12.2024
Vijay

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No

