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BEFORE H.S. BEDI & VINEY MITTAL, JJ.

JATT RAM,—Petitioner

versus

PUNJAB STATE HUMAN RIGHTS COMMISSION AND  
ANOTHER,—Respondents

C.W.P. NO. 18237 of 2003

18th May, 2005

*Constitution of India, 1950—Art. 226—Protection of Human Rights Act, 1993—Ss. 10, 12, 16, 17, 18 & 36—Punjab State Human Rights Commission (Procedure) Regulations, 1999—Regs. 9 & 14—Jurisdiction of the State Commission—Complaints for violation of Human rights—Commission taking cognizance by interferring with matters already pending before the Courts—In some cases, Commission ordering re-investigation which are being investigated and/or have been investigated by the Investigating Agency and in some cases ordering cancellation of FIRs—Even in some cases Commission disregarding & ignoring the orders passed by High Court—Whether the Commission has jurisdiction to issue such directions—Held, no—Entertainment of complaints and issuance of any such directions by Commission would not only amount to thwarting the investigation at the initial stage and interference with the same but shall also not be permissible in view of the fact that the Commission does not have any inherent powers—Scope of powers & functions of the Commission, stated—While enquiring into a complaint, Section 17(i) necessarily requires the Commission to call for information or report from the appropriate Government or any other authority subordinate thereto within such time as may be specified—Commission gets an authority to proceed in itself to inquire into the complaint of its own only when the information/report is not received within the stipulated time—Commission may not proceed with the complaint if the information/report satisfies it that no further inquiry is required—Commission has no power to initiate proceedings directly—Some reasons would have to be recorded by the Commission if it considers necessary to initiate proceedings directly without resorting to the procedure provided u/s 17(i)—S. 18 authorizes the Commission to make necessary 'recommendations' to the appropriate Government with regard to violation of human rights by a 'public servant'—Commission is enjoined with powers to inquire into the violation of human rights by a public*

*servant alone—Commission has no jurisdiction to entertain private disputes between the parties—Word ‘recommendation’ means—To suggest—Commission cannot treat such a suggestion to be a decision capable of execution or enforcement—S. 12 (b) provides that if some proceedings are pending before a Court, the Commission can intervene in those proceedings only with the approval of such Court—Commission has no jurisdiction in the matter to initiate parallel proceedings or order a parallel investigation—Directions issued by the Commission in the cases held to be totally without authority, jurisdiction & absolutely contrary to the powers vested in it and also in complete disregard to the directions issued by High Court.*

*Held*, that Section 17 (i) provides that while enquiring into the complaints of violation of human rights, the Commission may call for information or report from the appropriate Government within such time as may be specified by it. In a situation when the information or report is not received within the time stipulated by the Commission, it may proceed to inquire into the complaint on its own. Before proceeding any further in the matter, it is imperative for the Commission under the provisions of Section 17(i) of the Act to seek an information or report from the concerned Government. It is only on the receipt of the aforesaid information or report that the Commission can take any further proceeding in the matter. Clause (ii) is merely an exception to clause (i) and cannot be taken to be a general procedure to be adopted by the Commission on receipt of the complaint/information.

(Paras 31 & 33)

*Further held*, that Section 18 of the Act authorizes the Commission after completion of the investigation and enquiry, to make necessary recommendations to the appropriate Government with regard to violation of human rights by a public servant. Hence, where the allegations are not against any public servant of the State Government, then the complaint cannot be entertained by the Commission nor any cognizance of any such facts can be taken by the Commission. Further words “recommend” and “recommendation” have been defined in dictionary to mean to suggest as being suitable to be accepted, chosen etc., to commend. So the word “recommendation” used in Section 18 of the Act necessarily means “to suggest”. Such a suggestion cannot be treated to be a decision capable of execution or enforcement.

(Paras 34, 37 & 49)

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*Further held*, that a perusal of sub clause (b) of Section 12 would show that if some proceedings are pending before a Court, the Commission can intervene in those proceedings only with the approval of such Court. It, thus, necessarily follows that when a Court of competent jurisdiction, either civil or criminal, is already seized of the matter, the Commission has no jurisdiction in the matter to initiate parallel proceedings or order a parallel investigation. This intention of the Legislature can be inferred from the fact that in case of pending proceedings, the Commission is required to intervene in the proceedings only with the approval of such Court, where proceedings are pending. Obviously, this has been intended by the Legislature so as to avoid commencement of parallel proceedings. Even otherwise since the powers of the Commission are merely recommendatory in nature, therefore, necessary relief can only be sought by an aggrieved party, from a Court of competent jurisdiction.

(Para 38)

*Further held*, that the Commission or the State Commission in exercise of the powers under the Act have no power to issue directions, for ordering reinvestigation in a matter, which is being investigated and or has been investigated by the Investigating Agency nor have any powers to order the cancellation of FIR nor can entertain the complaints on the allegations that an FIR against a complainant had been wrongly recorded. Entertainment of the aforesaid complaints on the said allegations and issuance of any such directions by the Commission would not only amount to thwarting the investigation at the initial stages or interference with the same but shall also not be permissible in view of the fact that even in exercise of inherent powers of the High Court, the Apex Court has laid down certain restraints. In the circumstances, when the Commission does not even have the inherent powers, the power to interfere in investigation either on the asking of the complainant or on the asking of the accused in the FIR or suo-motu obviously cannot be inferred in favour of the Commission.

(Para 59)

*Further held*, that the various provisions of the Act nowhere provide that the Commission has been given any power or jurisdiction to pass any interim orders or make interim

recommendations. Sub-Section (3) of Section 18 is the only provision which gives the power to the Commission to recommend to the appropriate Government such immediate relief to the victim or the members of his family as the Commission may consider necessary but as the opening lines of Section 18 itself show that such steps can only be taken after the completion of the enquiry and not before it. There is absolutely no power to make any recommendations during the course of the enquiry. However, even Section 18 presupposes that the recommendations made by the Commission are to be made after completion of enquiry after hearing persons likely to be prejudicially affected, as required under Section 16 of the Act. It, thus, necessarily follows that no recommendations either interim or final even after the completion of the enquiry can be made by the Commission without hearing the persons likely to be prejudicially affected by the said recommendations.

(Para 62)

R. S. Chauhan, Advocate;

Sarjit Singh, Senior Advocate with Vikas Singh, Advocate;

Ashwani Chopra, Senior Advocate, with Ashish Chopra,  
Advocate ;

R. S. Bains, Advocate ;

M. L. Sarin, Senior Advocate, with Harpreet,  
S. Giani, Advocate ;

Gurcharan Dass, Advocate ;

R. S. Randhawa, Advocate ;

Ramesh Gumber, Advocate ;

Ashok Aggarwal, Addl. A.G. (Punjab) ;

G. K. Mann, Advocate ;

L. M. Gulati, Advocate ;

R. S. Bajaj, Advocate ;

G. S. Kaura, Advocate.

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**JUDGMENT**

**VINEY MITTAL, J.**

(1) This order shall dispose of seven Civil Writ Petitions No. 18237, 19855 of 2003, 3665, 1371 of 2004, 4834 of 2005, 814 and 28 of 2004 along with Criminal Miscellaneous No. 44216-M of 2003 which was ordered to be heard along with Civil Writ Petition No. 18237 of 2003 filed by the same petitioner. The common thread which runs through all the Writ Petitions is a challenge to the various orders passed by the Punjab State Human Rights Commission (hereinafter referred to as the "State Commission") being arbitrary, without jurisdiction, illegal and interference in the criminal investigation as well as in the administration of criminal justice and being in violation of provisions of law. All the aforesaid orders have been passed by the same member (Shri B. C. Rajput) of the State Commission.

(2) It might be relevant to notice facts in each case :

**Criminal Misc No. 44216-M of 2003 and Civil Writ Petition No. 18237 of 2003 :**

(3) On the statement of petitioner Jatt Ram, an FIR No. 110, dated 13th July, 2003 was registered at Police Station Guruharsahai against Makhan Ram and others, including one Jaswinder Singh, son of Surain Singh under sections 307/148/149 of the Indian Penal Code and under section 25/27/54/59 of the Arms Act. The aforesaid accused persons could not be arrested at the spot. Later on, the aforesaid accused also claimed that they had been caused injuries by the petitioner party. A DDR No. 21, dated 13th July, 2003 was registered at their instance. The matter was enquired into by the police and the version of the aforesaid accused Makhan Ram and others was rejected by the police. On a statement made by the aforesaid accused, Deputy Inspector General of Police, Ferozepur Range, deputed Deputy Superintendent of Police (D), Ferozepur to enquire into the matter. A report dated 11th September, 2003 was submitted by the aforesaid Deputy Superintendent of Police. It was reported that the version of aforesaid Makhan Ram and others was false. The aforesaid accused persons filed an application seeking anticipatory bail before the learned Sessions Judge, Ferozepur. *Vide* two separate orders dated 22nd August, 2003 and 28th August, 2003 the prayer made by the aforesaid accused

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persons was rejected. The aforesaid accused persons approached this Court through Criminal Misc No. 40013-M of 2003, seeking anticipatory bail. The said bail application was not dismissed as withdrawn by them on 3rd September, 2003. A copy of the order dated 3rd September, 2003 (Annexure P/5) shows that the said petition was got dismissed as withdrawn by the aforesaid accused persons after arguing the case at length. On the same date i.e. 3rd September, 2003 itself, the father of Jaswinder Singh, namely, Surain Singh filed a complaint under Section 12 of the Protection of Human Rights Act, 1993 (hereinafter referred to as the "Act"). It was alleged in the aforesaid complaint that on 12th July, 2003, Jatt Ram and others had started illegal construction in the land of Makhan Ram and on stopping them, they caused injuries to the complainant party (Surain Singh's party). It was further claimed that although an FIR No. 110, dated 13th July, 2003 had been registered on the asking of Jatt Ram and others, the police had merely recorded a DDR No. 21 at the instance of complainant party and no action had been taken because the Deputy Superintendent of Police who had conducted the investigation favoured the opposite party.

(4) On these allegations, the complaint in question was entertained by the Member of the State Commission and,—*vide* order dated 3rd September, 2003, a direction was issued marking the enquiry to be held by the Inspector General of Police (Litigation) through an officer not below the rank of Superintendent of Police and submit a report to the Commission. A further recommendation was issued to the State Government that till the enquiry is completed "no further action will be taken against the complainant party and the police will not harass them". The aforesaid order has been appended as Annexure P/6 with the petition.

(5) Petitioner, Jatt Ram filed Criminal Misc. No. 44216-M of 2003 under Section 482 of the Code of Criminal Procedure before this Court. The aforesaid order Annexure P/6 was impugned. A reply was filed by the Deputy Superintendent of Police in the aforesaid Criminal Miscellaneous petition. In the aforesaid reply also, the Deputy Superintendent of Police maintained that on investigation, the contents of FIR No. 110 dated 13th July, 2003 had been found to be correct whereas the version given by Makhan Ram and others had been found to be false and their injuries had been found to be self-inflicted.

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(6) In pursuance to the earlier orders Annexure P/6 passed by the State Commission, a report dated 19th October, 2003 was submitted by the Superintendent of Police (D), Moga. After thorough investigation of the entire matter, it was reported that Jatt Ram and others had not inflicted any injury to Makhan Ram and party and that the facts in FIR No. 110, dated 13th July, 2003 had been found to be true and the facts as narrated by Makhan Ram and others (complainant party before the State Commission) were found to be false and that Makhan Ram party had been found to be aggressors. The aforesaid report is Annexure P/8 on the record.

(7) In spite of the submission of the aforesaid report, the State Commission chose to continue with the proceedings, since some objections had been filed by the complainant to the said report. It may also be relevant to notice here that both the parties were already before the Civil Court, since Jatt Ram and others had obtained an order of status quo from the Civil Court on 3rd July, 2003 for restraining the other party not to demolish the khal in question.

(8) On the basis of the various contentions raised by the respective parties and on the basis of some record which was made available before the Commission by the parties, the Commission, very strangely, held that Makhan Ram and party could not be held to be aggressors and further that the order of status quo passed by the Civil Court could not be used by the police to protect Jatt Ram and party, because no injunction could be issued against a true owner and a true owner had every right to dispossess or throw out a trespasser.

(9) On the basis of the aforesaid findings, the State Commission rejected the report submitted by Superintendent of Police, Moga and the recommendations were made to the Senior Superintendent of Police, Ferozpur to cancel FIR No. 110, dated 13th July, 2003 under Section 307 of Indian Penal Code, of Police Station Guruharsahai, registered against Makhan Ram party and not to take any action against the aforesaid persons on the basis of the said FIR. A further recommendation was made to prevent Jatt Ram party to reconstruct the water channel in the field of Makhan Ram and others and to provide sufficient security to Makhan Ram and others against the aforesaid reconstruction of water channel. The State Government was further directed to consider the possibility of registering a criminal case against Jatt Ram party. The aforesaid order dated 7th November, 2003 has been appended as Annexure P/9 with the present petition and has been impugned before us.

CIVIL WRIT PETITION No. 19855 of 2003

(10) Petitioner, ASI Baldev Singh was posted at Police Station, Sadar Pathankot on 28th July, 1999. On the aforesaid date, Bishamber Dass, respondent No. 5, approached him with medical certificate of Ajay Kumar for the registration of a case under Section 323, 325, 148, 149 and 452 of the Indian Penal Code. An FIR No. 250 dated 19th July, 1999 was registered accordingly. Later on, aforesaid Bishamber Dass submitted a complaint to the Superintendent of Police, Pathankot and Senior Superintendent of Police, Gurdaspur levelling allegations against the petitioner that the complainant had been tortured, misbehaved and beaten up and an amount of Rs. 6,515 had been taken from his pocket. The aforesaid complaint was sent by the Superintendent of Police, Pathankot to the Senior Superintendent of Police, Gurdaspur, who forwarded the same to Deputy Commissioner, Gurdaspur. The petitioner claims that without holding any enquiry and associating the petitioner with the case an FIR No. 60, dated 19th March, 2001, was registered against him in police station Sadar Pathankot. It has further been pleaded by the petitioner that Superintendent of Police, Pathankot had also held an enquiry into the allegations levelled by aforesaid Bishamber Dass and had submitted a report dated 12th June, 2001 to the Senior Superintendent of Police, Gurdaspur, wherein it was reported that the allegations levelled by Bishamber Dass were false. Another enquiry was conducted by Superintendent of Police (Detective), Gurdaspur. The petitioner was associated in the aforesaid enquiry as well. Still further Bishamber Dass, respondent No. 5 also filed a criminal complaint under Section 323, 342, 357 and 506 of the Indian Penal Code in the Court of Judicial Magistrate, I Class, Pathankot. The said complaint was also dismissed. Having exhausted the criminal remedy as well as the departmental complaint against the petitioner, the aforesaid Bishamber Dass filed a complaint dated 26th July, 2001 before the State Commission under Section 12 of the Act. The State Commission took cognizance of the matter and initiated the enquiry. The complainant also challenged a report submitted by Ms. Vibhu Raj, I.P.S., Superintendent of Police, Pathankot, which she had prepared on reinvestigation, ordered by SSP, Gurdaspur and had found the petitioner innocent and had recommended the cancellation of FIR.,— *vide* an order dated 30th October, 2003, the State Commission (Single Member) rejected the report submitted by the Superintendent of Police Ms. Vibhu Raj and has recommended to the State Government to:



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immediately file a report under Section 173 of the Code of Criminal Procedure in the Court with regard to FIR No. 60, dated 19th March, 2001 under Sections 323, 342, 379 and 504 of the Indian Penal Code, against ASI Baldev Singh. It was further recommended that the cancellation report prepared on the basis of the report of Ms. Vibhu Raj, S.P. be ignored. Additionally the State Government was recommended to pay a sum of Rs. 25,000 by way of interim compensation to Bishamber Dass complainant and the aforesaid amount be recovered from the present petitioner, ASI, Baldev Singh. The aforesaid order dated 30th October, 2003 has been appended as Annexure P/1 with the present petition and has been impugned before us.

C.W.P. No. 3665 of 2004

(11) The facts in the present case reflect a strange and startling situation whereby respondent No. 7, Inspector, Gurmit Singh *alias* Pinky has been able to stall a criminal trial against him in spite of directions issued by this Court to conduct the trial on weekly basis.

(12) The petitioner is Amrik Singh. On 7th January, 2001 while he was going along with his son Avtar Singh, they were shot at. As per the prosecution version, Inspector Gurmit Singh *alias* Pinky along with other persons and some constables was drinking at a public place. When son of the petitioner requested for a way to pass, he was shot at by respondent No. 7. The petitioner also received gun shot injury but escaped. The son of the petitioner died on 8th January, 2001 in the hospital. An FIR No. 10, dated 8th October, 2001 under Sections 302, 307, 323, 336, 225, 148 and 149 of the Indian Penal Code etc. was registered at Police Station Division No. 5, Ludhiana against respondent No. 7, Gurmit Singh and eight other persons including his gunman. All the accused were arrested. After investigation of the case, a challan was presented against them before the learned trial Judge. Charges against the aforesaid accused were also framed on 11th April, 2001. The trial commenced. Prosecution witnesses were summoned. The petitioner claims that since the trial was going on at a good pace, therefore, respondent No. 7 moved a transfer petition before this Court, seeking transfer of the trial from Ludhiana to some other place. *Vide* order dated 10th October, 2001, this court transferred the aforesaid trial from Ludhiana to Chandigarh. On 17th October, 2002, respondent No. 7 was ordered to be released on bail. The petitioner has pleaded that after his release on bail, respondent No. 7 started threatening him and pressuring him to compromise the

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matter. Because of the aforesaid pressure and influence of respondent No. 7 the proceedings in the trial could not proceed further. Not a single witness was examined since September, 2001 for a very long time and, therefore, the petitioner had to approach this court seeking direction for a time bound trial and also seeking security for his protection. *Vide* order dated 14th July, 2003, this court directed the trial court to proceed with the trial on weekly basis and try to dispose of the same within a period of four months. After the directions issued by this court, the trial court expedited the trial. Respondent No. 7 became apprehensive with a view to thwart the aforesaid proceedings, he filed a complaint under section 12 of the Act before the State Commission. The present petitioner was not impleaded as a party in the said complaint. The complaint filed by Gurmit Singh was entertained by the State Commission. *Vide* order dated 28th August, 2003, it was held by the State Commission that a *prima facie* case was made out for intervention of the Commission. An enquiry by the Additional Director General of Police (Crime Branch) to reinvestigate the matter was ordered by the State Commission.

(13) The petitioner, apprehending that since a large number of prosecution witnesses had been examined and the trial was mid-way and that the intervention of the Commission was neither called for nor authorised under the Act, approached the State Commission for being impleaded as a party. *Vide* order dated 14th October, 2003, a notice of the aforesaid application was issued to the complainant by the State Commission. In the meantime, the Additional Director General of Police also sought extension of time to file the report. The case was adjourned on various dates for awaiting the report by the Additional Director General of Police, Punjab. The request made by the petitioner for being impleaded as a party was also adjourned for time to time. Lastly on 12th December, 2003, the State Commission ordered that the application filed by the petitioner be kept pending till a report is received from the Director General of Police. At this stage, the petitioner has approached this court making a grievance against taking of the cognizance of the complaint filed by respondent No. 7 during the pendency of the criminal trial already pending before the learned Sessions Judge, Chandigarh.

CIVIL WRIT PETITION No. 1371 of 2004.

(14) Petitioner, Sukhwinder Singh, had entered into an agreement to sell House No. 82, The Mall, Amritsar with respondent No. 2 for a sum of Rs. 57 lacs. The amount of sale consideration was

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paid to the owner (Respondent No. 2) on various dates. In the month of November/December, 1999. The sale deeds with regard to the aforesaid property were registered in the name of different buyers. The property was even mutated in the name of aforesaid buyers.

(15) After the expiry of nearly four years of the sale deeds having been executed and registered respondent No. 2, T.R. Bedi, filed a complaint against the petitioner before the State Commission under section 12 of the Act. It was claimed by him that petitioner, Sukhwinder Singh had developed intimacy with him and had expressed a desire for taking a personal loan of Rs. 15 lacs to which T.R. Bedi agreed. It was further claimed that the petitioner deposited jewellery worth Rs. 15 lacs and took money against promissory notes. On the basis of the similar allegations it was claimed that the petitioner, Sukhwinder Singh had entered into a criminal conspiracy to deprive him of his property and had forged and fabricated fake sale deeds in his name and his signatures and thumb impressions on the sale deeds were also faked and fabricated. Claiming that the Sub Registrar was also in league with the aforesaid persons, the said complaint was filed. This complaint was also entertained by the State Commission. It was directed that an enquiry be got conducted through some Judicial Officer. A retired Additional and District Judge, Shri N.S. Saini, was appointed as an Enquiry Officer to go into the matter and enquire into the fact as to whether the said sale deeds had actually been executed by T.R. Bedi or not. It was further directed that if it was found that the sale deeds had been forged then it should be reported that who were the persons responsible for forgoing the sale deeds. The record of the Sub Registrar, Amritsar was ordered to be sealed. The aforesaid Enquiry Officer Shri N.S. Saini was further directed to get the signatures/thumb impressions of the complainant compared from the Director, Finger Prints, Phillaur or the Director Forensic Science Laboratory, Chandigarh. The Senior Superintendent of Police, Amritsar and the Deputy Commissioner, Amritsar were directed to provide all assistance to Shri N.S. Saini. The aforesaid order has been appended as annexure P/4 with the present petition and has been impugned before us.

CIVIL WRIT PETITION No. 7768 of 2005.

(16) Shorn of unnecessary details given in the petition. It has been pleaded by petitioner Gulshanjit Kaur that her father Gurdial Singh committed suicide on 6th July, 2003. It has been

claimed that the aforesaid suicide was committed by Gurdial Singh on account of neglect and maltreatment given to him by Navtej Singh, Kuldeep Singh, Mohinder Singh, Sukhwinder Kaur and Kuljit Kaur. An FIR No. 147, dated 7th July, 2003, under section 306 of the Indian Penal Code was registered in Police Station Moga City-1 against the aforesaid persons.

(17) On registration of the aforesaid FIR. Navtej Singh, one of the accused persons filed a complaint under section 12 of the Act before the State Commission for re-investigation of the case. It was alleged that Gurdial Singh had not committed suicide but had in fact been murdered and a fake and forged suicide note had been prepared. On directions issued by the State Commission, the matter was entrusted for enquiry to Deputy Inspector General of Police, Ferozepur Range, Ferozepur,—*vide* order dated 1st August, 2003. Through the aforesaid order, SHO Mukhtiar Singh of Police Station City Moga was directed to be shifted from the aforesaid place. A further direction was issued that till further orders were issued by the State Commission, no further action on the basis of FIR No. 147, dated 7th July, 2003 under section 306 of the Indian Penal Code be taken against the petitioner and others.

(18) A report dated 8th October, 2003 was submitted by the Deputy Inspector General of Police. It was reported that the facts as given in the complaint were not correct and that Gurdial Singh had committed suicide by firing a shot and had written the suicide note in Urdu. In spite of the aforesaid report that the facts in the complaint were not correct, the State Commission through an order dated 12th December, 2003, held that no document had been placed on the record to show that Gurdial Singh knew how to read and write Urdu. It was further observed that Gurdial Singh was residing at the house of Gulshanjeet Kaur and Harinder Singh Kahlon at Moga and therefore matter required further investigation as to whether he was murdered by the aforesaid persons. It was held that the suicide note appeared to have been prepared in a planned manner and on that basis no criminal liability could be fastened on Navtej Singh Brar and others. Accordingly, the State Commission recommended the State Government that FIR No.147 dated 7th July,2003 under section 306 be got cancelled as Navtej Singh Brar and his brother Kuldip Singh( sons of Gurdial Singh) and their mother (widow of Gurdial Singh) were not responsible,

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in any manner, for abetting the alleged suicide committed by Gurdial Singh. Accordingly, the State Government was recommended that the aforesaid FIR be got cancelled. The State Commission also directed that further proceedings be taken against Gulshanjeet Kaur and Harinder Singh Kahlon to find out as to whether they had committed murder of Gurdial Singh. The aforesaid order dated 12th December, 2003 has been appended as Annexure P/8 with the petition and has been challenged before us.

CIVIL WRIT PETITION No. 4834 of 2005.

(19) At the instance of Balbir Singh, petitioner, an FIR No.39 dated 27th May, 2004 was lodged against Jagdeep Singh, Lambardar, respondent No.7 under section 307 of the Indian Penal Code read with various provisions of the Arms Act at Police Station Koom Kalan, Ludhiana. Respondent No.7 was enlarged on bail by the learned Sessions Judge on 16th June, 2004. The petitioner claims that after his enlargement on bail, respondent No.7 approached various police officers for lodging a cross case against the petitioner. Further on an application moved by the petitioner before the Deputy Inspector General of Police, Ludhiana, an enquiry was conducted by the Superintendent of Police, City-II, Ludhiana and it was reported that no case had been made out against the petitioner and others. On the submission of the aforesaid report, respondent No.7 filed a complaint dated 2nd March, 2005 before the State Commission under section 12 of the Act. On 3rd March, 2005, the complaint was entertained and through an order directions were issued to the police of Police Station Ludhiana not to file challan in the court in case FIR No. 39 dated 27th May, 2004. A further direction was issued to Senior Superintendent of Police, Ludhiana to ensure that the complainant party was not harassed or humiliated. A copy of the aforesaid order dated 3rd March, 2005 has been appended as Annexure P/5 with the present petition and has been impugned before us by the petitioner.

CIVIL WRIT PETITION No. 28 of 2004.

(20) This case is a classic illustration of an effort made by a member (Sh. B.C. Rajput) of the State Commission to completely disregard the directions issued by this court under Article 226 of the Constitution of India and to undermine the authority of this Court. An FIR No.270 was registered by the Police of Police Station Samana against Ashu Verma son of Raj Kumar Varma and Bhupinder Kumar son of Bhagwan Dass on 3rd August, 2002. Bhupinder Kumar was arrested on the next date. Ashu Verma could not be

arrested. On 31st October, 2002, Raj Kumar verma father of Ashu Verma moved an application to Deputy Inspector General of Police, Patiala Range, Patiala to transfer the inquiry from Deputy Superintendent of Police Samana to some other officer. The matter was, accordingly, entrusted to Superintendent of Police (D) Patiala on 31st October, 2002. It was also claimed that the matter had been compromised between the parties. Superintendent of Police (D), Patiala who conducted the enquiry reported that the offence was not compoundable and therefore, he requested the Senior Superintendent of Police to direct SHO, Police Station Samana to arrest Ashu and to effect recovery of sword, the weapon of offence and also to present a challan under section 173 of the Code of Criminal Procedure against Ashu Verma. Another FIR No. 241 dated 18th June, 2003 was registered against Shunty Verma son of Devi Chand Verma, sisters son of respondent No.5, and Rishu Verma son of respondent No.5, under section 385/387 of the Indian Penal Code. It has been claimed by the petitioner that a delegation of residents of Samana met the Sub-Divisional Magistrate to make arrest of the accomplices of Shunty Verma. The Sub Divisional Magistrate referred the matter to the Deputy Superintendent of Police Samana. On 26th June, 2003, Inspector General of Police sent a communication to Senior Superintendent of Police, Patiala transferring the case from Deputy Superintendent of Police, Samana to Deputy Superintendent of Police (Rural), Patiala. The matter was taken up for investigation by various authorities. It seems that a complaint was also filed by Raj Kumar Verma before the State Commission in the year, 2003. An enquiry was ordered to be conducted through Additional Director General of Police. On 14th October, 2003 a request was received from Director General of Police, to extend the time for holding enquiry as the said enquiry could not be completed. Raj Kumar Verma also moved another application claiming that Rajesh Chhibber, SHO Police Station City Samana (present petitioner) was torruring and harassing the complainant. On the aforesaid application, the State Commission directed that Rajesh Chhibber be transferred forthwith, outside District Patiala. A Copy of the order was sent to Inspector General of Police (Zonal) for complying with the same. The case was adjourned to 18th November, 2003 for further proceedings. The aforesaid direction, ordering his transfer by the State Commission, came to be challenged

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by Rajesh Chhibber before this Court through Civil Writ Petition No. 16728 of 2003. The following order was passed by a Division Bench of this Court on 23rd October, 2003.

“Notice of motion.

On the asking of the Court, Shri Ashok Aggarwal, Addl. A.G. Punjab, accepts notice on behalf of the State.

Heard.

The order dated 14th October, 2003 passed by the Punjab State Human Rights Commission is modified to the extent that it be treated as recommendation and the competent authority will consider his transfer in the light of the recommendation of the Commission.

Disposed of.

Copy of this order be given Dasti under the signatures of the Reader of this Court.”

(21) In view of the aforesaid orders passed by this Court, for treating the said directions to be a recommendation, the Inspector General of Police cancelled the earlier order of transfer of Rajesh Chhibber, which had been ordered on the directions issued by the State Commission. A copy of the aforesaid order dated 27th October, 2003 passed by the Inspector General of Police has been appended as Annexure P/11 with the present petition. On 9th December, 2003, when the matter was again taken up before the State Commission, it seems that a report had been submitted by the Enquiry Officer against which the complainant Raj Kumar Verma filed some objections. On the basis of the aforesaid objections a further enquiry was ordered by the State Commission. On a mention being made by the complainant Raj Kumar Verma, that the order of transfer of Rajesh Chhibber had not been implemented, the State Commission passed the following orders :

“I have gone through the file. In fact, the order with regard to transfer of Rajesh Chhibber on the directions of the Commission was passed by the I.G.P. Patiala but due to filing of the Writ Petition by Rajesh Chhibber, the said order could not be implemented. The High Court of Punjab and Haryana,—*vide* its order dated 23rd October, 2003,

ordered that the order dated 14th October, 2003 passed by the Punjab State Human Rights Commission is modified to the extent that it be treated as recommendation and the competent authority will consider his transfer in the light of the recommendation of the Commission. Though the said order of the High Court was passed on 23th October, 2003, but I.G.P. Patiala has not taken any further action in the matter. It is serious matter. The order with regard to transfer of Rajesh Chhibber was passed by the Commission in exercise of the powers under section 13 of the Protection of Human Rights Act, 1993. Even if the directions of the Commission are treated as recommendation, those are required to be complied with by the I.G.P. Patiala. Accordingly, he is required to comply with the said directions positively before the next date." (emphasis supplied)

(22) Taking of exception to the aforesaid directions issued by the State Commission, in spite of the earlier directions issued by this Court as noticed above, petitioner Rajesh Chhibber has approached this court impugning the aforesaid order dated 9th December, 2003 (Annexure P/15).

(23) The arguments in this case along with other connected matters were partly heard on 4th May, 2004. For further proceedings, the case was ordered to be adjourned for 18th May, 2005 i.e. today.

(24) At the commencement of the hearing today, learned counsel for the petitioner has filed an affidavit of the petitioner that he does not wish to proceed with the writ petition and that the petition be dismissed as withdrawn, since his transfer had been ordered in routine.

(25) We have taken into consideration, the allegations levelled by the petitioner in the present petition challenging the jurisdiction of the State Commission. While issuing notice of motion on 6th January, 2004, a Division Bench of this Court had taken note of the fact that in spite of the directions issued by this Court on 23rd October, 2003, the State Commission had still issued directions for transfer of the petitioner which virtually amounted to overruling the orders passed by this Court. It was also noticed that the State Commission had in fact transgressed the powers vested in it.



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(26) Because of the aforesaid reasons and also because of the fact that the arguments in the present case have remained part hard, we decline to permit the petitioner to withdraw the writ petition. The same is being decided on merits.

(27) In the backdrop of the facts of the various cases noticed above, we are essentially called upon to determine : What are the powers and functions, jurisdiction and authority of the Commission as well as the State Commission constituted under the Act ?

(28) At this stage, we may examine the various provisions of 1993 Act wherein the Punjab State Human Rights Commission has been constituted. Certain provisions relevant for the controversy in question may be noticed as follows :

“2 Definitions (1) In this Act, unless the context otherwise requires :

(a) XX

(b) XXX

(c) “Commission” means the National Human Rights Commission constituted under Section 3;

(d) “human rights” means the rights relating to life, liberty equality and dignity of the individual guaranteed by the Constitution or embodied in the International Conventions and enforceable by court in India.”

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(n) “State Commission” means a State Human Rights Commission constituted under Section 21.

**Section 10**

12. Functions of the Commission.—The Commission shall perform all or any of the following functions, namely :—
- (a) inquire, *suo motu* or on a petition presented to it by a victim or any person on his behalf, into complaint of—
    - (i) violation of human rights or abetment thereof; or
    - (ii) negligence in the prevention of such violation, by a public servant ;
  - (b) intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court ;
  - (c) visit, under intimation to the State Government, any jail or any other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection to study the living conditions of the inmates and make recommendations thereon ;
  - (d) review the safeguards provided by or under the constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation ;
  - (e) review the factors, including acts of terrorism, that inhibit the enjoyment of human rights and recommend appropriate remedial measures;
  - (f) study treaties and other international instruments on human rights and make recommendations for their effective implementation ;
  - (g) undertake and promote research in the field of human rights ;

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- (h) spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means ;
  - (i) encourage the efforts of non-governmental organisations and institutions working in the field of human rights ;
  - (j) such other functions as it may consider necessary for the promotion of human rights.

**Section : 16—Persons likely to be prejudicially affected to be heard**

If, at any stage of the inquiry, the Commission :—

- (a) considers it necessary to inquire into the conduct of any person ; or
- (b) is of the opinion that the reputation of any person is likely to be prejudicially affected by the inquiry ;

It shall give to that person a reasonable opportunity of being heard in the inquiry and to produce evidence in his defence ;

Provided that nothing in this section shall apply where the credit of a witness is being impleached.

**Section : 17—Inquiry into complaint :**

The Commission while inquiring into the complaints of violations of human rights may :—

- (i) call for information or report from the Central Government or any State Government or any other authority or organisation subordinate thereto within such time as may be specified by it.
  - (a) If the information or report is not received within the time stipulated by the Commission, it may proceed to inquire into the complaint on its own ;

- (b) If, on receipt of information or report, the Commission is satisfied either that no further inquiry is required or that the required action has been initiated or taken by the concerned Government or authority, it may not proceed with the complaint and inform the complainant accordingly.
- (ii) without prejudice to any thing contained in clause (i), if it considers necessary, having regard to the nature of the complaint, initiate an inquiry.

**18. Steps after inquiry :**

The Commission may take any of the following steps upon the completion of any inquiry held under this Act, namely :—

- (1) where the inquiry discloses, the commission of violation of human rights or negligence in the prevention of violation of human rights by a public servant, it may recommend to the concerned Government or authority the initiation of proceedings for prosecution or such other action as the Commission may deem fit against the concerned person or persons ;
- (2) approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary ;
- (3) recommend to the concerned Government or authority for the grant of such immediate interim relief to the victim or the members of his family as the Commission may consider necessary ;
- (4) subject to the provisions of clause (5), provide a copy of the inquiry report to the petitioner or his representative ;
- (5) the Commission shall send a copy of its inquiry report together with its recommendations to the concerned Government or authority and the concerned

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Government or authority shall, within a period of one month, or such further time as the Commission may allow, forward its comments on the report, including the action taken or proposed to be taken thereon, to the Commission ;

- (6) the Commission shall publish its inquiry report together with the comments of the concerned Government or authority, if any, and the action taken or proposed to be taken by the concerned Government or authority on the recommendation of the Commission.

**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.”

(29) In exercise of the powers conferred under section 10(2) of the Act, the Punjab State Human Rights Commission has framed procedural regulations known as Punjab State Human Rights Commission (Procedure) Regulations, 1999 (hereinafter referred to as the “Regulations”). Some of the relevant Regulations may be noticed as follows :

2. **Definitions :** In these regulations unless the context otherwise requires :

- (a) xxxx
- (b) xxxxx
- (c) xxxxx
- (d) “Complaint” means all petitions/communications received in the State Commission from a victim or any other person on his behalf, in person, by post, by telegram, by fax, or by any other means whatsoever, alleging violation or

abetment thereof the negligence in the prevention of such violation, by a public servant, of all or any of the human rights defined in Section 2(d) of the Act, or the material on the basis of which the State Commission takes *suo motu* cognizance.

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**9. Complaints not ordinarily entertainable :**

The State Commission may dismiss in limine complaints of the following nature,—

- (i) illegible ;
- (ii) vague ;
- (iii) trivial or frivolous ;
- (iv) barred under section 36(1) of the Act ;
- (v) barred under section 36(2) of the Act ;
- (vi) allegation is not against any public servant of the State Government ;
- (vii) allegations do not make out any specific violation of human rights ;
- (viii) matter is covered by a judicial verdict/decision of the State Commission ;
- (ix) the matter is outside the purview of the State Commission on any other ground.”

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**14. Preliminary consideration, issue of notice, etc.**

- (a) If on consideration of the complaint, the State Commission dismisses the complaint in limine, the said order shall be communicated to the complainant in Form No. IV and the case shall be treated as closed.

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- (b) If on consideration of the complaint or *suo motu* the State Commission admits/takes cognizance and directs issue of notice to any authority calling upon it to furnish information/report, a notice in Form No. V shall be issued, enclosing a copy of the complaint thereto. Such notice shall be signed by the Registrar.”

(30) National Human Rights Commission is constituted under Section 3 of the Act. Similarly State Human Rights Commission is constituted under Section 21 of the Act. Section 29 of the Act makes the provisions of sections 9, 10, 12, 13, 14, 15, 16, 17, and 18 of the Act, applicable to State Commission as well, with certain relevant modifications. Section 12 of the Act enumerates the functions of the commission. It is provided that the Commission shall enquire, *suo motu* or on a petition presented to it by a victim or any person on his behalf, into complaint of violation of human rights or abetment thereof, or negligence in the prevention of such violation, by a public servant. Clause (b) of section 12 of the Act authorises the Commission to intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court. Various other functions of the Commission have been provided, as are apparent from the reading of section 12 of the Act. Section 13 of the Act provides that a Commission while inquiring into complaints made under the Act shall have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908 i.e. recording of the evidence and enforcing the attendance of witnesses etc. Some other powers have also been conferred upon the Commission under Sub-sections (2), (3), (4) and (5) of Section 13 of the Act. Section 14 of the Act authorises the Commission for conducting any investigation pertaining to an enquiry, to utilise the services of any officer or investigation agency of the Central Government or any State Government, with the concurrence of the aforesaid Governments.

(31) Section 17 of the Act deals with the enquiry into complaints received by the Commission. It has been provided that Commission while enquiring into the complaints of violation of human rights may call for information or report from the Central Government or any State Government or any other authority or organisation subordinate thereto within such time as may be specified by it. In a situation when the information or report is not received within the

time stipulated by the Commission, it may proceed to inquire into the complaint on its own. In the other situation i.e. on receipt of information or report, if the Commission is satisfied either that no further inquiry is required or that the required action has been initiated or taken by the concerned Government or authority, it may not proceed with the complaint and inform the complainant accordingly. Sub clause (ii) of section 17, however, deals with a situation where, having regard to the nature of the complaint, the Commission considers it necessary to initiate an enquiry, then without prejudice to the procedure provided in clause (i), it may initiate an enquiry. It is, thus, apparent that clause (ii) is in the nature of an exception to the general rule provided in clause (i) of section 17 of the Act. From the aforesaid it must follow that while enquiring into the complaint of violation of human rights, the Commission is necessarily required to call for information or report from the appropriate Government or any other authority or organisation subordinate thereto, within such time as may be specified. It is only when the aforesaid information or report is not received within the said stipulated time that the Commission gets an authority to proceed itself to enquire into the complaint of its own. It, on the other hand, the information or report sent by the appropriate Government or the concerned authority satisfies the Commission that no further inquiry is required, it may not proceed with the complaint and inform the complainant accordingly. Therefore, it must be held that the resort to clause (ii) of section 17 can only be taken by the Commission directly when it considers necessary having regard to the nature of the complaint, to initiate the proceedings directly without resorting to the procedure provided under clause (i) of section 17 of the Act.

(32) For coming to the aforesaid conclusion that the provisions of Clause (i) were not required to be resorted to, having regard to the complaint, the Commission would have to come to a conclusion to that effect, meaning thereby, that some reasons would have to be recorded by the Commission. This is the only interpretation we find possible in order to harmonize the two clauses i.e. clause (i) and clause (ii) of section 17 of the Act. If it were to be interpreted that the Commission has the power to resort to Clause (ii) in all cases, automatically, whenever it finds that there is a violation of human rights, then obviously the provisions of clause (i) would be rendered Otiose and redundant. This could not be the intention of the legislature. It is well settled that while interpreting the various provisions of a statute, due



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regard has to be given to all the provisions of the statute and such a construction should be given to the language of a particular provision which harmonizes various provisions and makes them co-exist. This view of ours is also supported by regulation 14 of the Regulations, which provides that if on consideration of the complaint, the State Commission dismisses the complaint in limine, the said order shall be communicated to the complainant and the matter shall be treated as closed, but if on consideration of the complaint or *suo motu* the State Commission admits/takes cognizance and directs issue of notice to any authority calling upon it to furnish information/report, a notice in Form No. V shall be issued. It is, thus, apparent that on admission of the complaint or taking cognizance thereto, a notice in terms of section 17(i) is required to be issued, at the first instance.

(33) We may also notice that unlike the other judicial or quasi judicial authorities, the orders of the Commission have not been made appealable. The legislature in these circumstances, has obviously intended to provide an inherent check and balance in the working of the Commission. Section 17 (i) is one of the checks. Therefore, before proceeding any further in the matter, it is imperative for the Commission under the provisions of Section 17(i) of the Act to seek an information or report from the State Government. It is only on the receipt of the aforesaid information or report that the Commission can take any further proceedings in the matter. As notice above, clause (ii) is merely an exception to clause (i) and cannot be taken to be a general procedure to be adopted by the Commission on receipt of the complaint/information.

(34) Section 18 of the Act authorises the Commission, after completion of the investigation and on completion of the enquiry, to make necessary recommendations to the appropriate Government with regard to the aforesaid violation of human rights, by a public servant. Further section 36 of the Act makes certain matters not subject to jurisdiction of the Commission. Sub section (2) of section 36, provides that 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. It is, thus, clear that a specific period of limitation has been provided for initiating of proceedings even in connection with violation of human rights by a public servant. The acts which are found to be beyond the aforesaid period of one year

from the date, when the complaint in question is filed before the Commission, shall not be inquired into by the Commission or the State Commission.

(35) Thus, from the scheme of the Act and a perusal of the various provisions of the same and also from a reference of Regulations 2(d) and 9 of the Regulations, we find that the Commission is enjoined with powers only with a view to inquire into the violation of the human rights and abetment thereof or negligence in the prevention of such violations etc., by a public servant alone, and may make such recommendations to the appropriate Government as may be required necessary for a given case. The aforesaid powers of recommendations are also to be exercised by the Commission only in consonance with the various provisions of the Act including section 17 of the Act which we have analysed in the above paragraphs. No powers, whatsoever, have been conferred upon the Commission to set aside any order passed by any administrative or quasi judicial authority at the instance of any aggrieved person. The aforesaid orders, therefore, have to be challenged by an aggrieved person only in accordance with law before an appropriate forum. Private disputes between the parties cannot be entertained at all.

(36) During the course of arguments it was also sought to be argued that section 12 of the Act does not restrict the powers of the Commission to hold enquiries in violation of human rights or abetment thereof, merely by a public servant, but whenever, the Commission on receipt of a complaint or suo-motu finds that there is a violation of the human rights or abetment by anybody, irrespective of the fact as to whether the violation is by a public servant or not, the Commission can initiate proceedings for enquiry. However, we find that the scheme of the Act and specifically the language of section 12 thereof does not envisage any violation of human rights or abetment thereof by a private person but it is only the violation by a public servant that gives an authority to the Commission, subject to the other provisions of the Act, to take cognizance of the same. Regulation 2(d) of the Regulations defines a complaint to mean all petitions/ communications received in the State Commission alleging violation or abetment thereof or negligence in the prevention of such violation, by a public servant of all or any of the human rights defined in section 2(d) of the Act or the material on the basis of which the State Commission takes suo

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motu powers. Further regulation 9 of the Regulations also provides that the State Commission shall not entertain a complaint and dismiss the same in limine, if the allegations are not against any public servant of the State Government.

(37) It has been brought to our notice that the State Commission has itself taken a similar view in a Full Bench decision rendered by it in complaint No. 16649/1/2004 (F.C.) decided on 2nd February, 2005 by a majority of 3:1. We have perused the decision rendered by the Full Bench of the Commission in the aforesaid case and find ourselves in agreement with the same. Consequently we hold that where the allegations are not against any public servant of the State Government, then the complaint cannot be entertained by the Commission nor any cognizance of any such facts can be taken by the Commission.

(38) A further perusal of sub clause (b) of section 12 would show that if some proceedings are pending before a Court, the Commission can intervene in those proceedings only with the approval of such court. It, thus, necessarily follows that when a Court of competent jurisdiction, either Civil or Criminal, is already seized of the matter, the Commission has no jurisdiction in the matter to initiate parallel proceedings or order a parallel investigation. This intention of the Legislature can be inferred from the fact that in case of pending proceedings, the Commission is required to intervene in the proceedings, only with the approval of such Court, where proceedings are pending. Obviously, this has been intended by the Legislature so as to avoid commencement of parallel proceedings. Even otherwise since the powers of the Commission are merely recommendatory in nature, therefore, necessary relief can only be sought by an aggrieved party, from a Court of competent jurisdiction.

(39) This Court had an occasion to examine powers and functions of the Commission in an earlier case titled **Jai Singh versus Punjab State Human Rights Commission and another** C.W.P 20075 of 2003, decided on 2nd April, 2005. Similar views, as expressed by us in the present judgment were also taken in the said judgment as well. Additionally, it was observed as follows :

“It may also be relevant to notice here that the Commission is a creature of a Statute i.e. Protection of Human Right Act, 1993. It, therefore, cannot obviously clothe itself with such

powers which have not been conferred upon it by the aforesaid Statute. Apparently powers of judicial review have not been conferred upon the Commission. Powers of holding parallel proceedings, where the matter is already pending before a competent Court (civil or criminal), have also not been envisaged by the Act. Under the provisions of the Act, the Commission has been merely constituted with a function to make recommendations to the appropriate Government, when any violation of human rights by a public servant, is brought to its notice, after due investigation of the matter. As the language of section 18 itself suggests that the Commission has only power to make recommendations to the concerned Government or authority, for initiation of proceedings, or for initiation of such action as may be deemed fit. The word "recommendation" necessarily means "to Suggest." Such a suggestion cannot be treated to be a decision capable of execution or enforcement."

(40) The Supreme Court of India in the case of **N.C. Dhoundial versus Union of India and Others (1)** held as follows :

14. We cannot endorse that view of the Commission. The Commission which is a "unique expert body" is, no doubt, entrusted with a very important function of protecting human rights, but, it is needless to point out that the Commission has no unlimited jurisdiction nor does it exercise plenary powers in derogation of the statutory limitations. The Commission, which is the creature of statute, is bound by its provisions. Its duties and functions are defined and circumscribed by the Act. Of course, as any other statutory functionary, it undoubtedly has incidental or ancillary power to effectively exercise its jurisdiction in respect of the powers confided to it but the Commission should necessarily act within the parameters prescribed by the Act creating it and the confines of jurisdiction vested in it by the Act. The Commission is one of the fora which can redress the grievances arising out of violations of human rights. Even if it is not in a position to

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take up the enquiry and to afford redressal on account of certain statutory fetters or handicaps, the aggrieved persons are not without other remedies. The assumption underlying the observation in the concluding passage extracted above proceeds on an incorrect premise that the person wronged by violation of human rights would be left without remedy if the Commission does not take up the matter.”

(41) Learned senior counsel appearing for the State Commission in various petitions have argued that the Commission is enjoined upon to perform various functions enumerated in section 12 of the Act and have contended that Clause (a) of section 12 deals with a stage which is prior to clause (b). Accordingly it has been contended that even if some proceedings are pending before a Court, still the Commission does not lose its powers, which have been provided in Clause (a) of Section 12 of the Act. According to the learned senior counsel, the Commission is required to find out the violation of human rights or abetment thereof or negligence in the prevention of such violation, by a public servant. In those circumstances, according to the learned counsel, mere pendency of the proceedings in the Court of law does not oust the powers of the Commission to make an enquiry into the violation of human rights by a public servant. The learned Senior counsel have tried to buttress their argument by relying upon section 14 of the Act which deals with power relating to enquiry and investigation. It has been contended that the aforesaid provisions give independent powers to the Commission to hold an investigation or to order an inquiry and, therefore, the mere fact that some proceedings are pending in a Court will not take away the aforesaid powers. It has also emphasised that the power of recommendation enjoyed by the Commission under section 18 of the Act cannot be treated as mere suggestions, which are incapable of execution or enforcement.

(42) We have duly considered the aforesaid contentions of the learned senior counsel appearing for the State Commission, but on a consideration of the various provisions of the Act and Regulations, noticed by us above, we find ourselves unable to agree with the same.

(43) As held by the Apex Court in N.C. Dhoundial's case (*supra*) and as also held by us in the earlier Division Bench judgment, we find that the Commission can only enjoy such powers which have

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been provided to it specifically under the statute. Powers of judicial review have not been conferred upon the Commission. Power of holding parallel proceedings, where the matter is already pending in the competent Court (Civil or Criminal), have also not been envisaged under the scheme of the Act. It has been specifically observed by the Apex Court in N.C. Dhoundial's case (supra) that even if the Commission is not in a position to take up the enquiry and to afford redressal on account of certain statutory fetters or handicaps, the aggrieved persons are not without other remedies. It cannot be suggested that persons aggrieved by violation of human rights would be left without remedy if the Commission does not take up the matter. Remedy under the ordinary law is always available to an aggrieved party.

(44) A further perusal of the various clauses of section 12 of the Act would show that various functions have been enumerated which are to be performed by the Commission. Sub Clauses (c) to (j) deal with all such functions which are in the nature of visits to the jails and other institutions, for purposes of finding out the living condition of the inmates; review the safeguards provided under the Constitution or any law for the time being in force for the protection of human rights and recommend measure for their effective implementation; review the factors, including act of terrorism that inhibit the enjoyment of human rights and recommend appropriate remedial measures; study treaties and other international instruments on human rights and make recommendation for their effective implementation; undertake and promote research in the field of human rights; spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminar and other available means; encourage the efforts of non-governmental organisations and institutions working in the field of human rights; and such other functions as it may consider necessary for the promotion of human rights. Clauses (a) and (b) are only some of the functions which the Commission is enjoined to perform. The aforesaid two Clauses cannot be given any unnecessary and undue importance so as to override the various other important functions required from the Commission. The Commission was never intended to be a substitute for the regular Courts nor an alternative body for redressal of grievances which could be taken care of by the ordinary law. In these circumstances, section 12 read with section 17 of the Act clearly shows that the

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Commission is a body of experts created for the purposes of making recommendations to the State Government, in such matters which might not have been brought to the notice of the State Government otherwise. It is for that purpose that section 17 of the Act has specifically provided that while enquiring into the complaints, the Commission is required to call for information or report from the appropriate Government with regard to the allegations of violation of human rights in the complaint. The intention of law is very clear. Primarily, it is for the State Government to take remedial action. The Commission is only a catalytic body. If the contention raised on behalf of the State Commission were to be accepted then it would not only lead to providing of an approval to the holding of parallel proceedings but would also lead to an encroachment on the powers of the regular Courts established under law. This cannot be accepted.

(45) The learned senior counsel for the State Commission have also placed strong reliance upon a judgment of the Court in the case of **Ram Krishna Dalmia versus Shri Justice S. R. Tendolkar and others (2)** and another judgment of the Apex Court in **Committee for the Protection of Democratic Rights versus Chief Minister of the State of Maharashtra and others (3)** to contend that simply because that the matter was pending in a judicial Court would not oust the jurisdiction of the Commission. We have thoughtfully perused the aforesaid judgments also but in our considered view the reliance placed upon the aforesaid judgments is misplaced. The aforesaid judgments were dealing with cases where a Commission of Enquiry appointed under the Commission of Inquiry Act, 1952 had been constituted and the Constitution of the aforesaid commission had been challenged by the various parties. However, in the present case, controversy in question only relates to the power of the Commission and the State Commission which are statutory bodies and a creation of the Act. The functions being performed by the aforesaid Commission and the State Commission are statutory in nature and unlike a Commission of enquiry, which only acts on a reference by the State Government, certain statutory powers and functions have been conferred upon the Commission as well as the State Commission. Thus the said authorities are not attracted nor relevant to the controversy in hand.

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(2) AIR 1958 S.C. 538

(3) 1996 (1) S.C.C. 419

(46) With regard to the argument that the recommendations of the Commission cannot be treated to be a mere suggestion we may notice that the words "recommend" and "recommendations" have been defined in Webster's Encyclopedic Unabridged Dictionary of the English Language (New Revised Edition) as follows :

"Recommend" means 1. to present as worthy of confidence, acceptance use etc., commend; mention favourably; to recommend an applicant for a job to recommend a book 2. to represent or urged as advisable or expedient; to recommend caution, 3. to advise as an alternative; suggest (a choice, course of action etc.) as appropriate, beneficial, or the like. He recommended the blue plate special. The doctor recommended special exercises for her 4. to make desirable or attractive; a plan that has very little to recommend it.

"Recommendation" has been described to mean an act of recommending, 2. a letter or the like recommending a person or thing, 3. representation in favour of a person or thing 4. anything that serves to recommend a person or thing or induce acceptance or favour.

(47) Similarly in Corpus Juris Secundum, the word "recommend" and "recommendation" have been ascribed the following meaning :

"RECOMMEND" to advise or counsel, to counsel as to a course of action, to commend, to commend to the favourable, notice of another to bestow commendation on, to praise as desirable advantageous, trustworthy, or advisable, to put in a favourable light before any one, to speak in behalf of, to present as one's advice or choice or as having one's approval, to commit to, to commit to another's care, confidence, or acceptance, with favouring representations, to consign, to give in charge, to offer with favourable representations.

Ordinarily it involves the idea that another has the final decision although it is sometimes used in an imperative sense.

"Recommend" has been held synonymous with, or equivalent to, "desire".



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“Recommendation” : The act of one person in giving to another a favourable account of the character, responsibility, or skill of a third, the act of recommending or commending a person or thing to notice, use, confidence, or civility of another, favourable representation, mere suggestion as to the desirability of a certain course of action to be pursued, that which procures a favourable reception. The word is also defined as meaning a not commending a person to favour.

“Recommendation” : has been held equivalent to, or synonymous with, “certificate” and “reference”, and has been compared with, or distinguished from, “decision” and “instruction”.

(48) In Chambers 21st Century Dictionary (Revised Edition) also, Recommend has been described to mean to suggest as being suitable to be accepted, chosen etc.; to commend.”

(49) Thus the view taken by us with regard to meaning of the word “recommendations” in Jai Singh’s case (*supra*) stands fully fortified. We reiterate that the word “recommendation” used in section 18 of the Act necessarily means “to suggest”. Such a suggestion cannot be treated to be a decision capable of execution or enforcement.

(50) There are various instances when this court as well as the Commission is called upon to intervene in criminal matters at the instance of either party. Some times the allegations are levelled against the investigating agency with regard to the investigation being conducted not in fair and proper manner and some times a grievance is made that the criminal proceedings have been launched with a *mala fide* intention or with ulterior motive. Invariably this court is called upon to interfere in the matter by exercising its inherent powers under section 482 of the Code of Criminal Procedure (hereinafter referred to as the “Code”). The Apex Court has settled the matter by laying down that the inherent powers of the High Court under section 482 of the Code are to be used sparingly. It has been repeatedly held by the Supreme Court that inherent powers of this court cannot be used either to scuttle the investigation, interfere with the same or to prematurely abort it. It has also been held that in exercise of the powers under section 482 of the Code neither any comments should be offered nor any remarks be made by the Court when an investigation is pending as the same would prejudice the investigation. It has also been laid down that this court while exercising the powers under section 482 of the Code cannot take into consideration statements of

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some persons whose evidence is yet to be recorded during trial. The law laid down by the Apex Court in some of the cases covering the inherent jurisdiction of the High Court under section 482 of the Code may be noticed as follows :

(51) In case of **Om Parkash Chugh versus State of Haryana** (4) it has been held :

“.....We have come across from the judgment of the learned single Judge of the High Court that remarks have been made on the averments contained in the complaint as well as the case involved in FIR No. 452 of 1997. We are of the considered view that the High Court should not have made such comments on the averments contained in the complaint as the same remains only in the *embargo* stage because the complaint has not yet been forwarded by the Magistrate to the police as contemplated in Section 156(3) of the Code. Even that apart, any finding on the merits of the case at a stage when investigation is pending would cause prejudice to the investigating agency as well as the accused concerned. Those observations and remarks made by the learned Single Judge in the impugned judgment are not warranted, particularly since the stage was too premature. We make it clear that we have not gone into the allegations made in the complaint or the materials collected by the investigating agency in respect of FIR No. 452 of 1997. We refrain from expressing any opinion at this stage as the investigation into them must be held in the fairest manner possible. We, therefore, set aside the impugned judgment of the High Court.”

(52) In case of **T.T. Antony versus State of Kerala and Others** (5) the Apex Court appreciates the law laid down by the Privy Council in the case of **Emperor versus Khwaja Nazir Ahmad** (6) wherein it was observed as follows :

“In India, as has been shown, there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority

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(4) 2000 (10) S.C.C. 612

(5) 2001 (6) S.C.C. 181

(6) AIR 1945 P.C. 18

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from the judicial authorities, and it would, as Their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the court.”

(53) It was observed by the Supreme Court in the aforesaid case that the right of the police to investigate into cognizable offence is a statutory right in which the court does not possess any supervisory jurisdiction under Cr. P.C. However, the Supreme Court held that the aforesaid power of the police was not unlimited but was subject to some well recognised limitations and in some of the situations the High Court possessed inherent powers to interdict the investigation to prevent abuse of the process of the court. The well settled principles of law on the subject have been reiterated a number of times and also in the case of **State of Haryana versus Bhajan Lal (7)**. The aforesaid considerations for exercise of inherent powers by this court may be noticed as follows :

“In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercise.

- (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not *prima facie* constitute any offence or make out a case against the accused.

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(7) 1992 Supp. (1) S.C. 335

- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
- (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.
- (7) Where a criminal proceeding is manifestly attended with *mala fides* and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

(54) In the case of **State of Orissa versus Bansidhar Singh (8)** it was held by the Supreme Court that High Court, while exercising powers under section 482 of the Code could not have

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taken into account the statement of certain persons whose evidence was yet to be recorded at the time since the case was at the investigation stage itself.

(55) In the case of **State of Bihar and another versus Md. Khalique and another (9)** the Apex Court observed as under :

“Law is well settled regarding interference by the High Court with an investigation of a case. The extraordinary power under Article 226 or inherent power under Section 482 Cr.PC. can be exercised by the High Court either to prevent abuse of process of any court or otherwise to secure the ends of justice. The power of quashing a criminal proceeding should be exercised sparingly and with circumspection and that too in the rarest of the rare cases.”

(56) The law laid down by the Supreme Court was again reiterated in the case of **M. Narayandas versus State of Karnataka and others (10)**.

(57) In a recent case i.e. **State of A.P. versus Golconda Linga Swamy and another (11)** after reiterating the law laid down in Bhajan Lal's case (supra), the Supreme Court held that it would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It was further held that it would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. With regard to the allegations of *mala fide* in lodging the criminal proceedings, the following observations made by the Apex Court may be noticed :

“.....When an information is lodged at the police station and an offence is registered, then the *mala fides* of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in court which decided the fate of the accused person. The allegations of *mala fides* against the informant are of no consequence and cannot by themselves be the basis for quashing the proceeding.”

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(9) 2002 (1) S.C.C. 652

(10) 2003 (11) S.C.C. 251

(11) 2004 (6) S.C.C. 522

(58) Taking into consideration the aforesaid law laid down by the Apex Court in various judgments, as noticed above, we made the following observations in Jai Singh's case (*supra*) :

“In the light of the settled law by the Apex Court with regard to the inherent powers of the High Court in interfering with the powers of the investigation by the investigating agency and making further comments or remarks on the veracity or authenticity of the prosecution version, it has been repeatedly held by the Supreme Court that High Court has no such power to scuttle the investigation at the initial stages and that the investigating agency has a statutory right of investigation. Even when there are inherent powers with the High Court to interfere at the stage of investigation, it has been held that the aforesaid powers shall be sparingly used in the rarest of the rare cases.

What is true about the powers of the High Court and the limitation put there upon is obviously true for the Commission. In addition, from the perusal of the provisions of the Act, we notice that there are no inherent powers which have been conferred upon the Commission. As noticed above, the Commission is merely a creation of the statute. There are no general or plenary powers enjoyed by the Commission. In contrast to the court of law which enjoys inherent and plenary powers, the Commission does not have any such powers.

On the same analogy it would be proper for us to hold that even in civil disputes, which are governed essentially by the Code of Civil Procedure or some other statutory provisions, the Commission has no role to play. We have already noticed above, that under section 12 of the Act, it is only the violation of human rights or abetment thereof by a public servant, or negligence in the prevention of such violation by a public servant that would give a cause of concern to the Commission to initiate an enquiry into the matter. It would, therefore, necessarily follow that unless and until a case fails within the four corners under the provisions of the Act, the Commission have neither any authority nor any power even to initiate proceedings or inquire into the matter and obviously no direction (even in the shape of recommendations) can be issued.”

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(59) As a result of the aforesaid discussion and keeping in view the law laid down by the Apex Court in various judgments noticed above, and the provisions of the Act and the Regulations, we have no hesitation in holding that the Commission, or the State Commission, in exercise of the powers under the Act have no power to issue directions, for ordering reinvestigation in a matter, which is being investigated and or has been investigated by the investigating agency nor have any powers to order the cancellation of F.I.Rs. nor can entertain the complaints on the allegations that an F.I.R. against a complainant had been wrongly recorded. As noticed above, entertainment of the aforesaid complaints on the said allegations and issuance of any such directions, by the Commission would not only amount to thwarting the investigation at the initial stages or interference with the same but shall also not be permissible in view of the fact that even in exercise of inherent powers of the High Court, the Apex Court has laid down certain restraints. In these circumstances, when the Commission does not even have the inherent powers, the power to interfere in investigation either on the asking of the complainant or on the asking of the accused in the F.I.R. or *suo-motu* obviously cannot be inferred in favour of the Commission.

(60) At this stage we may also notice a contention raised during the course of arguments by the learned counsel for the parties. It was argued by the learned counsel for the petitioner, that there is no power with the Commission to grant any interim relief or pass any interim direction under the Act. Learned counsel have referred to section 18 of the Act which deals only with steps after the completion of the enquiry contemplated under the Act. Sub-section (3) of section 18 merely enables the Commission to recommend the concerned Government or authority for the grant of such immediate interim relief to the victim or the members of his family as the Commission may consider necessary. Thus, it has been argued before us that merely on presentation of the complaint and taking cognizance thereof, there are no powers with the Commission which enable it and confer any jurisdiction to issue any interim directions or recommend to the State Government any such interim measures.

(61) We have duly considered the aforesaid contention of the learned counsel as well. We find merit in the aforesaid submission.

(62) The various provisions of the Act noticed by us, nowhere provide that the Commission has been given any power or jurisdiction to pass any interim orders or make interim recommendations. Sub-section (3) of section 18 is the only provision which gives the power to the Commission to recommend to the appropriate Government such immediate relief to the victim or the members of his family as the Commission may consider necessary but as the opening lines of section 18 itself show that such steps can only be taken after the completion of the enquiry and not before it. There is absolutely no power to make any recommendation during the course of the enquiry. However, even section 18 presupposes that the recommendations made by the Commission are to be made after completion of enquiry after hearing persons likely to be prejudicially affected, as required under section 16 of the Act. It, thus, necessarily follows that no recommendations either interim or final even after the completion of the enquiry can be made by the Commission without hearing the persons likely to be prejudicially affected by the said recommendations.

(63) Section 13 of the Act provides the power of the Commission relating to enquiries. The relevant portion of section 13 may be noticed as follows :—

“13. *Power relating to inquiries :*

- (1) The Commission shall, while inquiring into complaints under this Act, have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908, and in particular in respect of the following matters, namely :—
  - (a) summoning and enforcing the attendance of witnesses and examining them on oath ;
  - (b) discovery and production of any document ;
  - (c) receiving evidence on affidavits ;
  - (d) requisitioning any public record or copy thereof from any court or office ;
  - (e) issuing commissions for the examination of witnesses or documents ;
  - (f) any other matter which may be prescribed.”



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(64) The question, therefore, arises as to whether while enquiring into the complaints under the Act, the Commission can issue interim orders and as to whether any such powers have been conferred upon the Commission under section 13 of the Act. On the first flush, it does appear that the Commission has all the powers which are enjoyed by a Civil Court under the Code of Civil Procedure. However, on a deeper consideration of the matter, we find that the Commission under section 13 of the Act does not enjoy all the powers which are conferred upon the Civil Court under the Code of Civil Procedure, but has only such powers which the Civil Court has while “trying a suit”. In particular some powers have been enumerated in Clauses (a) to (f) of sub-section (1). The Code of Civil Procedure confers certain powers upon a Civil Court trying a suit and in addition certain powers have been conferred upon the Civil Court for deciding a case. The power to try a suit is quite distinct and separate from the powers to decide a case. While trying the suit, the Court has the power to receive the plaint, issue notices to the defendant, receive his written statement, examine the parties, frame issues, receive plaintiff’s evidence, receive defendant’s evidence, hear arguments and deliver the judgment. These are the powers which are steps in the trial of the suit and, therefore, the aforesaid powers have obviously been conferred upon the Commission also under section 13 of the Act. However, the Civil Court also enjoys certain additional powers i.e. to decide a case. Those powers include power to issue injunctions and pass such other interim orders, as may be required etc. The aforesaid orders, while issuing injunctions etc. are not steps in the suit. As a matter of fact issuance of an injunction by a Civil Court amounts to deciding a case. This distinction between the powers of the Civil Court “trying a suit” and powers of the civil court “in deciding a case” were noticed by a Division Bench of the Allahabad High Court in the case of **Rameshwar Dayal versus Sub-Divisional Officer, Ghatampur and others (12)**. The following observations made by Division Bench in the aforesaid case may be noticed with advantage :—

“so it must be interpreted to mean that the Tribunal is only authorised to take those steps for the trial of the petition which a Court has to take for the trial of a suit. The steps that a Court has to take in the trial of a suit are receiving

the plaint, issuing notices to the defendant, receiving his written statement, examining the parties framing issues, receiving plaintiff's evidence, receiving defendants's evidence, hearing arguments and delivering the judgment. Section 90(2) means that an election tribunal has to take the same steps at the hearing of the petition and nothing more. The C.P.C. makes a distinction between what is a step in the trial of a suit, i.e. what is included in the trial of a suit and what is not included in the trial of a suit. Even when a Court tries a suit it may also decide a case. For example, if while trying a suit it issues an injunction it amounts to deciding a case; it is not a step in the suit because it does not advance the termination of the suit in any way. There are numerous authorities dealing with Section 115 which explain what proceedings taken under the Code itself amount to a case as distinct from the suit. It seems to us that generally speaking all acts done or orders passed by a Court trying a suit which do not form part of the suit itself, but would amount to a case within the meaning of Section 115, are outside the jurisdiction of an election tribunal.

(65) After an elaborate discussion on the subject and taking into consideration the provisions of various enactment and the law laid down by the Supreme Court and various other Courts, Division Bench in the aforesaid case laid down as follows :

“(13) In the result we find that even if the Sub-Divisional Officer had all the powers that are conferred by the C.P.C. he could not grant the interim relief sought for.”

(66) The law laid down in Rameshwar Dayal's case (*supra*) was followed by this Court in the case of **Kundan Singh versus The Executive Magistrate Ist Class, Barnala (13)** and it was held that an election Tribunal being a Special Court of limited jurisdiction had no authority to pass any order outside its limit and in the absence of any specific provision to the contrary, an Election Tribunal has no inherent jurisdiction like that vested in ordinary Civil Court and, therefore, has no jurisdiction to pass interim injunction orders.

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(67) Another Division Bench of this Court in the case of **Sham Lal versus State Election Commission, Punjab (14)** accepted the law laid down in Rameshwar Dayal's case (*supra*) and Kundan Singh's case (*supra*). In the case of **Sucha Singh Langah and others versus State of Punjab and others (15)**, another Division Bench of this Court held as follows :

"24. Assumption of inherent powers in absence of specific statutory provisions is a concept which has hardly met the approval of the Court under different laws. It is a matter of common understanding that the Legislature normally provides for such interim powers if it intends that such Tribunal, Commission or Forum should exercise such powers. It will be appropriate to refer to the provisions of Punjab Panchayati Raj Act, 1994, wherein the Director has power to remove a Sarpanch under the provisions of Section 20 of the Act, their power to suspend during the course of enquiry has been specifically given to the Director under Section 20(4) of the Act. Such interim power has been specifically provided for despite the fact that under the provisions of Section 71 of the said Act the provisions of the Code of Civil Procedure, 1908, would apply where provided under that Act. Reference to this law is an apt example in reference to the facts of the present case. Panch/ Sarpanch are again elected persons, but they can be removed after compliance with the prescribed procedure and could be suspended only because of the specific provisions in the Act.

(68) We may also notice with advantage certain observations made by the Apex Court in the case of **Morqan Stanley Mutual Fund V. Kartick Dass (16)**. The controversy in the aforesaid case before the Supreme Court was with regard to the powers of the District Consumer Forum under the Consumer Protection Act, 1986. The Supreme Court noticed the provisions of section 14 of the Consumer Protection Act, and held that the aforesaid provisions merely provided certain powers of the District Forum to take certain steps and pass

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(14) 1997 (1) P.L.R. 687

(15) 2004 (1) P.L.R. 705

(16) 1994 (4) S.C.C. 295

certain orders after the conclusion of the proceedings conducted under section 13 of the aforesaid Act. Accordingly, it was held that there was no power under the Act to grant any interim relief and only a final relief could be granted. It was further observed that if the jurisdiction of the forum to grant relief is confined to only clauses mentioned in section 14 of the aforesaid Act, then no interim injunction could ever be granted disregarding the aforesaid powers. We may also notice the following observations made by the Apex Court :

“47: There is an increasing tendency on the part of litigants to indulge in speculative and vexatious litigation and adventurism which the fora seem readily to oblige. We think such a tendency should be curbed. Having regard to the frivolous nature of the complaint, we think it is a fit case for award of costs, more so, when the appellant has suffered heavily. Therefore, we award costs of Rs. 25,000 in favour of the appellant. It shall be recovered from the first respondent. C.A. No. 4584 of 1994 arising out of SLP (C) No. 272 of 1994 is allowed accordingly.”

(69) We respectfully agree with the conclusions arrived at in Rameshwar Dayal's case, Kundan Singh's case, Sham Lal's case, and Sucha Singh Langah's case (*supra*) and hold that even though the Commission has all the powers of a Civil Court while enquiring into the complaints under the Act but the aforesaid powers are only such powers which are enjoyed by a Civil Court trying a suit. There are no plenary powers nor any inherent powers enjoyed by the Commission which are otherwise available to the Civil Court. It must, therefore, follow that the Commission does not have any power of issuing the interim or ad-interim orders while enquiring into the complaints under the Act.

(70) At this stage, we may also notice, in view of the facts of certain cases which we have noticed in the beginning of the judgment itself, that the State Commission in some cases has taken cognizance by interfering with the matters which are already pending before the Courts. The orders passed by the Civil Court or the Criminal Court have been commented upon. The State Commission has chosen to order independent enquiry or/and reinvestigation even when the prosecution evidence in a criminal trial has already commenced. The directions issued by this Court under section 226 of the Constitution

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of India have not been accepted, although obliquely. This cannot be countenanced nor permitted. The provisions of the Act cannot be interpreted to mean that some extra-ordinary powers have been conferred upon the Commission. When the orders passed by a Court of competent jurisdiction are not to the liking of the party against whom the same have been passed, the only remedy available to the aggrieved party is to approach the higher Court. Recourse to the proceedings under the Act before the Commission cannot be permitted in such circumstances.

(71) After having dilated upon the various powers and function of the Commission under the Act and the Regulations, we may now examine, the controversy involved in each of the individual cases.

Crl. Misc. No. 44216 and C.W.P. No. 18237 of 2003.

(72) The facts noticed above, show that an FIR No. 110 dated 13th July, 2003 was registered at Police Station Guruharsahai on the statement of petitioner Jatt Ram. Accused Party in the aforesaid FIR were denied anticipatory bail by the learned Sessions Judge, Ferozepur through orders dated 22nd August, 2003 and August 28, 2003. The aforesaid accused persons filed a Criminal Misc. 44216-M of 2003 in this Court seeking anticipatory bail. After arguing the case at length, they withdrew the aforesaid application on 3rd September, 2003. On the same day, Surain Singh, respondent No. 2, approached the State Commission and filed a complaint under section 12 of the Act. Order Annexure P/6 was passed on the same day by the Member of the State Commission. Directions were issued to the police that no further action would be taken against the complainant party and that "the police will not harass them". An enquiry to be conducted by the Inspector General of Police (Litigation) was ordered. It is, thus apparent that the relief which the accused persons could not get from the Criminal Court and from this Court, was granted to them by the Member of the State Commission. Still further a report dated 19th October, 2003 was submitted by the Superintendent of Police (D) Moga. In the aforesaid report also, it was concluded that the version given by Jatt Ram and party in FIR 110 dated 13th July, 2003 was true and Jatt Ram and party had not inflicted any injuries to Makhan Ram and party and further that Mankan Ram and party (complainant before the Commission) was found to be aggressor party. In spite of the aforesaid report the State Commission chose to proceed in the matter

primarily because of some objections having been raised by the complainant party before it. Subsequently, a final order dated 11th September, 2003 (Annexure P/9) was passed. A perusal of the order shows that even an order with regard to maintenance of *status quo* directed by the Civil Court was noticed by the State Commission but it was held that since no injunction could be ordered against the true owner, therefore, the order of status quo by the Civil Court cannot be used by the police to protect Jatt Ram and party. Directions (although nomenclatured as "recommendations") were issued to the State Government to direct Senior Superintendent of Police, Ferozpur to cancel FIR 100, dated 13th July, 2003 under section 307 of the Indian Penal Code and not to take any action against Makhan Ram and party in the said FIR; to take preventive measure at the spot not to permit Jatt Ram and party to reconstruct the water channel in the field of Makhan Ram and party (although the matter was pending in the Civil Court); to consider the possibility of registering a criminal case against Jatt Ram and party being aggressor.

(73) In view of the detailed discussion on the powers and functions of the Commission in the earlier part of the judgment and on the basis of the interpretation of the various provisions of the Act and Regulations, we find that the aforesaid directions issued by the State Commission are totally without authority, jurisdiction and absolutely contrary to the powers vested in the State Commission and as a matter of fact run contrary to the directions issued in Civil and Criminal proceedings. Not only that the State Commission has tried to interfere into the statutory right of investigation of the police in FIR No. 110, dated July 13th, 2003, which was clearly impermissible.

(74) Accordingly, we allow the present petitions and quash proceedings in complaint No. 8130 of 2003 and the orders Annexure P/6 and P/9 passed by the State Commission, with costs of Rs. 25,000 which shall be recovered from the complainant (respondent No. 2) Surain Singh. The aforesaid costs shall be deposited with the Punjab State Legal Services Authority.

C.W.P. No. 19855 of 2003.

(75) The facts, as noticed above, in the earlier portion of the judgment, show that a reinvestigation in the case was conducted by Ms. Vibhu Raj, Superintendent of Police, Pathankot to find out the correctness of the allegations contained in FIR No. 60, dated March 13th, 2001 against petitioner ASI Baldev Singh. On the aforesaid

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reinvestigation, she found the petitioner ASI Baldev Singh as innocent and directed the SHO concerned to prepare a cancellation report. The aforesaid cancellation report was accordingly prepared and sent to Senior Superintendent of Police, Gurdaspur for further processing. In the meantime the complaint in question was filed under section 12 of the Act by Bishamber Dass before the State Commission. The State Commission entered into enquiry itself and rejected the aforesaid report of Ms. Vibhu Raj, Superintendent of Police. Her report was rejected since it was opined by the State Commission that she had travelled beyond the orders of the Senior Superintending of Police and had started conducting the enquiry/investigation denovo. After coming to the aforesaid conclusion, the State Commission directed the State Government (although nomenclatured as "recommendation") to immediately file a report under section 173 of the Code of Criminal Procedure in the Court relating to FIR No. 60, dated March 19th, 2001 against petitioner Baldev Singh. It was further directed that the cancellation report prepared on the basis of the report of Ms. Vibhu Raj, IPS, Superintendent of Police be ignored. A further recommendation was made to the State Government to pay an amount of Rs. 25,000 as an interim compensation to Bishamber Dass, complainant and the aforesaid amount be recovered from petitioner, Baldev Singh.

(76) A perusal of the order passed by the State Commission shows that it has directed to ignore the cancellation report prepared on the basis of the report of Ms. Vibhu Raj, Superintendent of Police and directions have been issued to file a report under section 173 of the Code against the petitioner. The aforesaid directions are again totally without jurisdiction and beyond the powers and scope of the authority vested in the State Commission under the Act. Under the provisions of Criminal Procedure Code, if a cancellation report was to be submitted for cancellation of FIR No. 60, dated March 19th, 2001, the complainant before the State Commission (Bishamber Dass) would obviously have a right to lodge protest before the Criminal Court. It would be at that stage that the Criminal Court would be required to go into the correctness or otherwise of the report of Ms. Vibhu Raj, Superintendent of Police on reinvestigation. The State Commission could not be accepted to exercise the functions and powers of the Criminal Court.

(77) Consequently, the present petition is allowed and the proceedings in complaint No. 4248 of 2001 and the order Annexure P/1 dated October 30th, 2003 passed by the State Commission are quashed with costs of Rs. 25,000, to be paid by the complainant before the State Commission, Bishamber Dass (respondent No. 5). The aforesaid cost shall be recovered from the said respondent and shall be payable to the Punjab State Legal Services Authority.

CIVIL WRIT PETITION No. 3665 of 2004.

(78) The facts in this case speak for themselves. A challan under section 302 and various other provisions of the Indian Penal Code was presented against respondent No. 7, Inspector Gurmit Singh *alias* Pinky and 8 other persons for the murder of Avtar Singh son of petitioner Amrik Singh. Charges were framed as far back as on April 11, 2001. Prosecution evidence commenced on September 3, 2001. Efforts were made by Gurmit Singh *alias* Pinky to delay the proceedings. Earlier he sought transfer of the criminal case from Ludhiana to some other place. Vide order dated October 16, 2001, the case was transferred from Ludhiana to Chandigarh for trial. On October 17, 2002, Gurmit Singh *alias* Pinky was granted bail. On his enlargement on bail, he made still further efforts to delay the proceedings. Directions were issued by this Court on July 14, 2003 to the trial Court to proceed with the case on weekly basis and try to dispose it of within a period of four months. The proceedings were, accordingly, sought to be expedited by the trial Court. At that stage, respondent No. 7, Gurmit Singh *alias* Pinky approached the State Commission seeking reinvestigation in the FIR. The said reinvestigation was ordered by the State Commission ignoring the fact that the Criminal Court was already seized of the matter and in fact the trial in the murder case had commenced. An application filed by the present petitioner before the State Commission for being impleaded as a party was kept pending unnecessarily. Vide an interim order passed in the proceedings the State Commission directed that the aforesaid application shall be heard only after the report of the Additional Director General of Police (Crime) was received. This course adopted by the State Commission cannot be permitted. Apparently initiation of the proceedings and seeking a report from Additional Director General of Police (Crime) with regard to the aforesaid FIR No.10 would actually amount to holding a parallel trial. When a large number of prosecution witnesses had already appeared before the Criminal Court and their statements recorded, then there was absolutely no occasion for the



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State Commission to seek a report from the Additional Director General of Police (Crime) with regard to correctness or otherwise of the version given by the prosecution. Entertaining the complainant in question, taking cognizance thereof and seeking a report from the Additional Director General of Police (Crime) by the State Commission, in our view, is clearly without any authority or powers vested in the State Commission and actually amounts to an attempt to usurp the powers of the trial Court.

(79) Accordingly, the proceedings in the complaint filed by respondent No. 7 Inspector Gurmit Singh *alias* Pinky before the State Commission are liable to be quashed. Consequently, the present writ petition is allowed. The proceedings before the State Commission in complaint No. 7674 of 2003 including the order Annexure P/1 are hereby quashed with costs of Rs. 25,000/- to be paid by respondent No. 7, Inspector Gurmit Singh *alias* Pinky. The aforesaid costs shall be recovered and deposited with the Punjab State Legal Services Authority.

C.W.P. No. 1371 of 2004.

(80) The facts show that the dispute between the parties was essentially of a civil nature. The agreement in question was entered between the petitioner and respondent No. 2 for the sale of House No.82, The Mall, Amritsar for a sum of Rs. 57 lacs in the month of February, 1992. On payment of the total sale consideration at various points of time sale deeds with regard to the said property were executed in the month of December, 1999. A mutation of the property was entered in the name of the purchasers. After the expiry of nearly four years, respondent No.2 filed a complaint before the State Commission. He took up the plea of fraud and forgery. The State Commission took cognizance of the said matter. It appointed Shri N.S. Saini, a retired District and Sessions Judge to hold an enquiry into complaint to find out as to whether the sale deed in question contained forged and fabricated signatures of complainant T.R. Bedi. It was completely ignored by the State Commission that the said complaint was barred by limitation as provided under section 36(2) of the Act. Under section 14 of Act, an investigation pertaining to the enquiry can only be conducted by the Commission through an officer or investigating agency of the Central Government or the State Government, with the concurrence of the Central Government or the State Government, as the case may be.

No powers have been vested with the Commission to hold an enquiry through a private person. In any case the complaint was hopelessly barred by limitation. Still further the allegations contained in the complaint raised merely a civil dispute. The Commission, as such, could neither entertain the complaint nor proceed any further in the matter. The order dated October 23, 2003 passed by the Commission is totally without any authority or jurisdiction. As a matter of fact, the proceedings before the Commission cannot be continued.

(81) Accordingly, the present petition is allowed. Proceedings before the State Commission in complaint No.11220 of 2003 filed by respondent No.2, T.R. Bedi including the order Annexure P/4 are quashed with costs of Rs. 25,000/- to be paid by Shri T.R. Bedi. The aforesaid costs shall be recovered and deposited with the Punjab State Legal Services Authority.

C.W.P. No. 4824 of 2004.

(82) An F.I.R. No.39, dated May 27, 2004 was registered against Jagdeep Singh, respondent No. 7 under section 307 of the Indian Penal Code. Respondent No. 7 filed a complaint under section 12 of the Act before the State Commission, claiming that he had been involved in a false criminal case on the basis of a concocted story. The cognizance of the said complaint was taken by the State Commission. Vide an order dated March 3, 2005, the police was directed not to file the challan in the Court in case F.I.R. No.39 dated May 27, 2004. Further directions were issued to Senior Superintendent of Police, Ludhiana to ensure that the complainant party (before the Commission) is not harassed or humiliated by the police in any manner.

(83) The Supreme Court of India in a large number of judgments has laid down that even the High Court should not interfere under section 482 of the Code of Criminal Procedure to thwart the investigation or hamper the same in any manner. It has been held that right of investigation is a statutory right of the investigating agency. It is, thus, clear that when even this court should be slow to interfere in proceedings under section 482 of the Code of Criminal Procedure for directing the police not to file challan in the court in exercise of its inherent power, then obviously State Commission has no jurisdiction to issue the aforesaid directions, more so when it has no inherent powers at all. Moreover, we have already noticed above, that the State Commission does not have any powers to pass any

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interim orders. We also find that the entertainment of the complaint for reinvestigation of the matter in FIR duly recorded by the police is not within the scope of the powers of the State Commission.

(84) Accordingly, we allow the present petition, quash proceedings in complaints No.2531/10/2005 and the order Annexure P/5 with costs of Rs. 25,000/- which shall be borne by respondent No. 7 Jagdeep Singh. The aforesaid cost shall be recovered and deposited with the Punjab State Legal Services Authority.

C.W.P. No. 814 of 2004.

(85) The facts show that an FIR No.147 under section 306 of the Indian Penal Code was registered by the police of Police Station Moga City-1 against Navtej Singh, Kuldip Singh and others for abetting the suicide committed by Gurdial Singh, their father. While committing suicide, a suicide note dated July 7, 2003 was found written in Urdu by Gurdial Singh in his own handwriting. On registration of the aforesaid FIR Navtej Singh Brar one of the accused in FIR filed a complaint before the State Commission claiming reinvestigation of the case. The matter was taken cognizance by the State Commission,— *vide* order dated August 1, 2003. Enquiry was entrusted to Shri H.S. Randhawa, IPS, Deputy Inspector General of Police, Ferozepur Range, Ferozepur to enquire into the whole episode and report. It was also directed that SHO Mukhtiar Singh should be shifted from Police Station Moga so that he may not interfere in the reinvestigation of the case. Further directions were issued that any further action on the basis of the aforesaid FIR be not taken against the accused till further orders from the Commission. A report dated October 8, 2003 was submitted by the aforesaid Shri H.S. Randawa, Deputy Inspector General of Police. He found that Gurdial Singh had committed suicide by firing a shot after writing a suicide note. It was also opined that Gurdial Singh was suffering from cancer and was not being looked after by his own family and on his own will had shifted from Bagha Purana and started living at Moga having fed up from his own family. On that basis a report was submitted that there was no truth in the allegations of complainant Navtej Singh Brar. Even after submission of the aforesaid report, the State Commission chose to proceed with the matter. Ultimately,— *vide* an order dated December 12, 2003, it was held that no document had been placed on record to show that Gurdial Singh knew how to read and write Urdu and that it was not proved that the suicide note in Urdu was

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written by Gurdial Singh. Even the report submitted by Assistant Director, Forensic Science Laboratory was rejected holding that the science relating to hand writing was not perfect. Ultimately it was held by the State Commission that the suicide note appeared to be prepared in a planned manner and on that basis no criminal liability could be fastened on Navtej Singh Brar and others. After making the aforesaid observations, further proceedings were ordered to find out as to whether Gurdial Singh Brar was murdered by Gulshanjeet Kaur and Harinder Singh Kahlon and others or not. Lastly, a direction was issued to the State Government (again nomenclatured as "recommendation") that FIR No. 147 dated July 7, 2003 under section 306 of the Indian Penal Code be got cancelled as Navtej Singh Brar, his brother Kuldip Singh and their mother are not responsible in any manner for abetting the alleged suicide committed by Gurdial Singh Brar.

(86) For the reasons of the view we have taken with regard to the powers and authority of the State Commission interfering in the matter of investigation, we find that the State Commission had acted absolutely without any authority in recommending/ordering the cancellation of the FIR. No such powers could have been assumed by the State Commission. The said direction/recommendation actually amounts to an interfere with the investigation. This is not permissible. We find that the proceedings before the Commission could not have been entertained/continued with regard to finding out as to whether the FIR in question was based on truth or not. That was the function of the investigation or the criminal court.

(87) Accordingly, we allow the present petition and quash the proceedings in complaint No. 7102/03 pending before the State Commission including the order Annexure P/8, with costs of Rs. 25,000 to be borne by respondent No. 6, Navtej Singh Brar. The costs shall be recovered and deposited with the Punjab State Legal Services Authority.

C.W.P. No. 28 of 2004.

(88) We have already noticed the facts in detail in the earlier portion of the judgment. We have also noticed that the request made by the petitioner to withdraw the writ petition has been rejected by us, for the reasons that order Annexure P/15 passed by the State Commission was in complete disregard of the directions issued by this Court on October 23, 2003 in C.W.P. No. 16728 of 2003 and that,—*vide* order dated January 6, 2004 this Court had taken due note of

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the fact that the Member of the State Commission (Shri B.C. Rajput), had clearly transgressed the power vested in the State Commission. We have also declined the aforesaid prayer to withdraw the present writ petition because of the fact that the proceedings in the case have remained part heard, having been argued on 4th May, 2005 earlier.

(89) The relevant facts noticed by us shown that on 14th October, 2003, the State Commission by way of interim direction had directed that the present petitioner, Rajesh Chhibber, SHO City Samana be transferred forthwith outside District Patiala. The aforesaid order was challenged by petitioner Rajesh Chhibber through C.W.P. No. 16728 of 2003. The order passed on 23rd October, 2003 by this court has already been reproduced above, while noticing the facts. It was directed by this Court that the aforesaid direction of the State Commission be treated as recommendation. On aforesaid order having been passed under Article 226 of the Constitution of India by this Court, the transfer of SHO Rajesh Chhibber was cancelled on the recommendation of Senior Superintendent of Police, Patiala, who had reviewed the case and sent the written recommendation in this regard. On a subsequent occasion when the proceedings were taken by the State Commission on 9th December, 2003, the State Commission passed further directions which have already been noticed by us, while narrating facts of the petition..

(90) From the directions issued by the State Commission on 9th December, 2003, it is apparent that the order passed by this Court in C.W.P. No. 16728 of 2003 dated 3rd October, 2003 were almost ignored by the Member of the State Commission and non-compliance of his earlier directions contained in order dated 14th October, 2003 was viewed very seriously. Thereafter, a fresh direction was issued to comply with the aforesaid order even if "the directions of the commission are treated as recommendation". From the language used by the Member of the State Commission, Shri B.C. Rajput, we are satisfied that an effort has been made by the aforesaid Member to overreach the directions issued by this court on 23rd October, 2003 and the order dated 9th December, 2003 has been passed by the State Commission totally in disregard to the powers vested in the State Commission under the Act. It is apparent that the proceedings in the complaint/enquiry have not been completed so far before the Commission. In these circumstances, no interim directions could have been issued by the State Commission. As a matter of fact, we have already held that the State Commission does not enjoy any power of

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passing interim orders before the completion of enquiry. The order Annexure P/12 dated 9th December, 2003 passed by the Member of the State Commission are not only without jurisdiction or authority, contrary to law and powers vested in the State Commission but also in complete disregard to the directions issued by this Court on 23rd October, 2003. We feel that an effort has been made by the member of the State Commission to undermine the authority of this Court.

(91) Accordingly, the present petition is allowed. Orders dated 9th December, 2003 passed by the State Commission are hereby quashed with costs of Rs. 25,000 to be borne by respondent No. 5 Raj Kumar Verma. The aforesaid costs shall be recovered and deposited with the Punjab State Legal Services Authority.

(92) Before parting with this judgment, we forward a suggestion to the Punjab State Human Rights Commission. As per regulation 11 of the Regulations, the complaints received by the State Commission are required to be put up, in the first instance, before a Single Bench for examination, except such complaints which are involving vital or complex issues, are to be listed before a Division Bench. Further as per regulation 13 of the regulations, the number of cases to be included in the cause list before each Bench (es) per day is to be decided by the Chairperson. Looking at the purpose of the Act and the important functions being performed by the State Commission, we suggest that the matters coming before the State Commission should, even in the first instance, be heard by a Division Bench. The hearing of such complaints by a Division Bench would convey to the complainant and to the public servant/authority guilty of violation of the human rights or abetment etc. thereof, the importance of the matter. Further the wisdom of two would be better and would convey the gravity and concern of the State Commission more appropriately. However, this would be a matter entirely for the State Commission to consider and to amend the regulations or to take such further decisions as may be appropriate. We leave it at that.

(93) Looking into the important issues involved in the present case, it would be appropriate to send copies of this judgment to National Human Rights Commission, New Delhi and Chief Secretary, Punjab for information.

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**R.N.R.**