



MAHARASHTRA STATE HUMAN RIGHTS COMMISSION

9, Hajarimal Somani Marg, Opp. Chhatrapati Shivaji Terminus (VT), Mumbai - 400 001
Tel : 2207 3434 Fax : 2207 3434, 2209 2857 Website : <http://mshrc.maharashtra.gov.in>

SHRC/SRB/ /2017/

Date:

DIVISION BENCH **Case No. – 4853/2009-10**

Name of the Complainant : M D Choudhary
National Workshop President
Human Rights Association for Protection
F – 14, World of Mother,
Jai Ganesh Vision, Akurdi
Pune – 411 035

Name of the Respondent : **The Superintendent of Police**
Pune (Rural)

The Superintendent of Police,
Office of CBI Pune Unit, Akurdi
Pune

The Superintendent of Police
(CBI), CBI office,
G Block, BKC, Bandra (E)
Mumbai 400 051

Date : **23rd March 2017**

Coram : **Justice S R Bannurmath, Chairperson**
M.A. Sayeed, Member

O R D E R

(Per: Justice S.R. Bannurmath, Hon'ble Chairperson)

This is yet another incident of apathy / negligence and possibly partisan attitude on the part of the concerned Police which has resulted in loss of life of a RTI Activist. As such an NGO Human Rights Association for Protection has approached this Commission.

On receipt of the complaint when the matter was before Hon'ble Member Shri. M A Sayeed he had called for reports from all the concerned.

After inquiry on number of occasions as the Hon'ble Member felt it necessary taking into consideration the seriousness of the incident felt that the matter requires consideration by a Division Bench and accordingly as per the Provisions of Regulation 16 of the MSHRC, Procedure Regulation 2001 the matter is taken up by the Division Bench.

On going through the records the undisputed facts emerged from the records is that one Shri. Satish Shetty of Talegaon Dhabade (deceased victim) was an social worker who was exposing the misdeeds of both private and Government machinery especially in respect of corruption and illegal land grabbing incidents. The records show on his complaints number of cases have been registered against the erring officials and individuals involved in the land grabbing and corruption cases.

The records disclose that the deceased Satish Shetty had brought to the notice of the SP, Pune (Rural) the alleged illegal activity of Iron Infrastructure Investment Pvt Ltd., JYO Development Corporation, IRB who had colluded and created false records to grab lands and after much persuasion necessary action by way of registration of criminal cases took place on 15.10.2009. As this exposure of criminal activity created resentment and anger by these people against the victim and as he felt that there was threat to his life and his family, he gave a representation to the SP, Pune (Rural) on 23.11.2009 and 24.11.2009 seeking Police protection. The records reveal that inspite of the clear Government Resolution No. SSA-10/2000/1/Spl Br.-4 dtd. 03.01.2000 issued by Home Department, it appears that no action was taken and on 13.01.2010 the deceased was brutally murdered in the morning when he was on his morning walk at Talegaon Dhabade. As such the NGO has filed this complaint.

On perusal of the records especially the detailed inquiry conducted by Spl IGP, Kolhapur Range himself, it is apparent that the various Police Officials of the rank of SDPO, SP have slept over the application dated 24.11.2009 of the deceased. The report shows that though the application for the protection was given on 23.11.2009 and 24.11.2009 to the SP, Pune (Rural), the same reached SDPO after a delay of 13 days thereafter the SDPO kept the matter pending for nearly 20 days and then sent it to the local crime branch and in turn the local crime branch has forwarded the same to SDPO Lonavala Division after about 43 days. In turn there was a time lapse of nearly 15 days on the part of the SDPO Lonavala in making inquiry. All these dates and delays clearly show that there was apathy / negligence or possibly partisan attitude on the part of the concerned officer above named which has resulted in the brutal death of Shri Satish Shetty. The Spl IGP, Kolhapur range has concluded in his report that the consideration of application for protection was delayed because of the negligence of the concerned officials.

In this regard it is to be noted that as long back as on 03.01.200 the home department has issued a GR referred to earlier that whenever a person asked for police protection the concerned Police should make immediate inquiry and if prima facie there appears to be a cause, immediate Police protection should be given pending the inquiry. Though the guidelines or directions are exhaustive each of the officials viz. the SP, SDPO (Legal Branch), SDPO, Lonavala and SDPO Dehu Road have blatantly defied the mandatory procedure and which has resulted in the death of Satish Shetty.

On going through the entire records the Commission finds that the death of Satish Shetty who was brutally murdered only because of serious

lapses and negligence on the part of the above named officers. As such the Commission is of the view that there was serious violation of human rights of the deceased Satish Shetty and his family. The records does not reveal as to what action was taken by the DGP on the basis of the report filed by the Spl. IGP Kolhapur range. Be that as it may, since the Commission finds that the brutal death of Satish Shetty was possible because of the apathy and negligence on the part of the police officials in not considering the application for Police protection as per the GR referred to above leads to the possible inference that there might be collusion with the people whose ill deeds the deceased tried to expose.

Before concluding the Commission places on record its appreciation for the concern shown by Human Association for Protection, Pune in projecting the human rights issues by way of present complaint.

In the result the Commission makes following recommendations:

- A) The State and the Home Department is directed to instruct all the Police officials to strictly follow the directions issued in the GR SSA-10/2000/1/Spl. Branch-4 dtd 03.01.2000 and the GR SSA/1007/CR-736/Spl Branch-4 dtd 24.01.2008.**
- B) The State and the Home Department to initiate appropriated departmental inquiry against the erring officers referred to in the order, if already not initiated and send the action taken report to the Commission within four weeks from the date of receipt of this order.**
- C) In view of the finding of the Commission that the apparent apathy and negligence and possible partisan attitude of all the concerned Police Officials in not considering the**

application of the deceased Satish Shetty for police protection much less taking any action as per the GR referred to above resulting in his brutal death, it is just and proper to award an interim compensation of Rs.15,00,000/- (Rupees Fifteen Lacs) to his legal representative within four weeks from the date of receipt of order and submit compliance report in two weeks thereafter.

With these recommendations case is closed. Ordered accordingly.

**(M.A. Sayeed)
Member, SHRC**

**(Justice S. R. Bannurmath)
Chairperson, SHRC**



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SHRC/SRB/ /2017/

Date:

DIVISION BENCH

Case No. – 613/2016 c/w. Suo Motu Case No. 5/2016

Name of the Complainant : Sonali Balasaheb Dendge
Ghoti Mala, Tal Shirur
Dist. Pune

Name of the Respondent : Medical Superintendent
Yashwantrao Chavan Memorial Hospital
Pimpri Chinchwad Municipal Corporation
Pimpri, Pune – 411 018

Date : **23rd March 2017**

Coram : **Justice S R Bannurmath, Chairperson**
M.A. Sayeed, Member

PROCEEDINGS

(Per : Justice S.R. Bannurmath, Hon'ble Chairperson)

Initially Suo Motu Case No. 5/2016 was registered in respect of the alleged medical negligence resulting in amputation of a leg of a patient. However, later on receipt of a complaint of Smt. Sonali Balasaheb Dendge regarding the alleged medical negligence resulting in amputation of a leg of her husband Shri Balasaheb Haribhau Dendge age 32 years the present case 613/2016 is registered. Since subject matter in both the cases is common both the cases are taken up for consideration together.

Report from the Yashwant Rao Chavan Memorial Hospital of PCMC is called for and a detailed report is received along with medical records.

The records disclose that the victim Balasaheb Haribhau Dendge was suffering from varicose veins disease in the right leg and as such was admitted to the YCM Hospital of PCMC on 14.09.2015 and was operated on 16.09.2015. It is stated that during the surgery the femoral artery was damaged causing excessive bleeding and later leg has to be amputated above knee.

Though the hospital authorities denied any negligence on the part of the concerned doctor while carrying on the surgery, it is to be noted that as per the Hon'ble Supreme Court judgment in the case of Martin D'souza Vs. Mohd. Ishfaq (Civil Appeal 3541/2002), there is a guideline issued to look into the medical negligence cases after a Committee of doctors look into the same and find whether there is medical negligence or not.

In the present case the Commissioner of PCMC has written a letter to the Sassoon General Hospital, Pune to look into the issue and a committee consisting of five doctors has opined as follows, "**Shri. Balasaheb Haribhau Dendge, Age 32 years, Male was operated for varicose veins of right side lower limb on 16.09.2015 at YCM Hospital, Pimpri.**

Considering the injury to femoral artery and vein, operating surgeon Dr. Mannan Singh is responsible for the complications. Improper technique seems to be a cause for the injury. Dr. Mannan Singh is working as Registrar in the surgery and has done his MS in General Surgery. Routinely this surgery is done at the same level. **Injury caused during the surgery indicates gross negligence.** Record fails to show any anatomical aberrations responsible for this injury.

In this situation this is a case of gross incompetency and negligence on the part of Dr. Mannan Singh".

(Emphasis Supplied)

For our purpose this report of an expert committee is sufficient to hold that there was a medical negligence while conducting the surgery of varicose veins on Shri. Balasaheb H Dendge and a fairly young person had to lose his limb for no fault of his. This medical negligence as found by the committee of expert doctors of Sassoon Hospital itself is sufficient to hold that there was violation of human rights of the victim.

As such while closing the case 5/2016 the Commission makes following recommendations in Case No. 613/2016:

- A) **The Maharashtra Medical Council is directed to take appropriate action against the erring Dr. Mannan Singh as per the recommendations sent by the Medical Superintendent – YCM, Hospital based on the expert committee report of Sassoon Hospital.**
- B) **In view of the disability suffered by the victim due to medical negligence no doubt it is stated by his sister Smt. Shanta Savta Bankar present today that a compensation of Rs. 5 Lacs is paid by the concerned erring Doctor. However, keeping in view doctrine of vicarious liability in our view taking into consideration the permanent loss and disability suffered by the victim it would be just and proper to award a further compensation of Rs. 5 Lacs to be paid by the PCMC to the victim within four weeks from the date of receipt of this order and report compliance within two weeks thereof.**

With these recommendations case is closed. Ordered accordingly.

(M.A. Sayeed)
Member, SHRC

(Justice S. R. Bannurmath)
Chairperson, SHRC



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SHRC/SRB/ /2017/

Date:

Case No. – 1549/2016 c/w. 1551/2016

Name of the complainant : Deepika Sanjay Chavan
Vidhan Sabha Member
Baglan, Nashik

Vijay Kisanrao Wagh
R/o. Nampur Road,
Satana, Tal. Bagalan,
Dist. Nashik

Vs.

Name of the Respondent : The Superintendent of Police
Nashik (Rural)

Date : 5th April 2017

Coram : Justice S. R. Bannurmath, Chairperson

ORDER

The first complaint is by Smt. Deepika Sanjay Chauhan – MLA, Baglan, Nashik bringing it to the notice of the Commission the brutal assault on one Shri. Vijayraj Kisan Wagh owner of UPKAR Hotel near Satana Bus Stop. It is alleged that on 08.04.2016 while the victim Shri Vijayraj was near his hotel a Police Official took him to the police station wherein he along with others was assaulted and thereafter he was brought near the UPKAR Hotel and on the road again assaulted. In this regard the victim Shri. Vijay Wagh also approached the Commission and had lodged a

complaint and as such connected case 1551/2016 is registered. The complainant along with his complaint has filed the medical report, photographs of the injuries received by him and also footage of CCTV near his hotel and alleged spot of incident.

Since the subject matter in both the cases is one and the same, both the matters are clubbed together and taken up for consideration.

Considering the material produced by the complainant, the Commission called for the report from the Superintendent of Police, Nashik.

A detailed report dated 08.07.2016 is filed by the Superintendent of Police, Nashik interalia stating that the allegations are all false. According to the Superintendent of Police on 08.04.2016 around 2330 hrs while the then Inspector Shri. P T Patil and his staff were on rounds and when they came near the UPKAR Hotel near Satana Bus Stand, they saw the victim and 4-5 others standing there. Since it was late night that the Police Inspector asked them to go home, but instead of complying with the same, it is alleged the victim and others started not only arguing with the Police Officials but also tried to assault said Shri. Patil – Police Inspector. As such after calling for reinforcement when the reinforcement came, the people gathered including the victim started running helter-skelter and in that process the victim Shri. Vijayraj fell down and received certain injuries. It is stated that thereafter all this mob including Vijay Wagh came to the police station and created a havoc by damaging the CCTV camera and DVR box. It is also stated that they damaged the government vehicles parked and as such RCP Platoon was called for and as they used mild force to disperse the mob, many persons were injured. It is stated that in

this regard on the complaint of Shri Vishwanath a Police Constable criminal case 72/2016 for the offences under Sections 436,353,332,452,148,143,147, 149, 323, 504, 506 r/w. 34 IPC. Destructions of Public Properties Protection Act has been registered against complainant and others. Similarly, on the basis of the complaint by the victim Vijay Wagh a crime No. 73/2016 is also registered against some police officials under section 325, 324, 323, 504, 506(2), 427, 342 r/w 34 IPC and the matter is pending inquiry. It is important to note while concluding the Superintendent of Police Shri. Ankush Shinde has stated that as it was felt that said Police Inspector Shri. Patil had used force in excess and more than necessary resulting in severe injury to Shri. Vijay Wagh, disciplinary action is also taken against said Shri. Patil and three Police Constables.

After receipt of the report copy of the same was sent to the victim and he attended the hearing on 05.01.2017 but inspite of due summons there is no representation from the Police Officials. As such case was adjourned from time to time and after informing both the sides by issuing summons and fax, the case was fixed for hearing today (i.e 05.04.2017). At the outset it is to be noted that except sending the reports dt. 08.07.2016, there is no appearance or representation on the part of the concerned Police Officials. In the order dated 05.01.2017 though the Commission deprecated such conduct of apathy, shown by the Superintendent of Police and officials, in fact directed the Superintendent of Police to be present in person on the next date of hearing. Even in the notice of hearing dated 21.03.2017 and a fax sent on that date, such directions is issued. Even then today there is no representation from the

Police Official. As such holding that the concerned Police officials are not interested in attending hearing inspite of sufficient opportunity given, the case is taken up for consideration, since the complainants are present.

The Commission has perused all the records including the photographs, medical certificate and the CCTV footage produced by the complainant as well as the report filed by the Superintendent of Police, and accompanying records.

At the outset it is to be noted that except the so called self serving statement / report of the Superintendent of Police and the FIR copies of the cases registered there is absolutely no material to show that the alleged assault on the Police Officials especially the Police Inspector Shri Patil or causing damage to the public property by damaging the CCTV camera, DVR box or setting fire and damaging the Police Vehicles by the victim Shri. Vijayraj Wagh or his alleged accompanying persons. On the other hand the medical certificate in respect of the victim Shri. Vijayraj Wagh, the photographs of the injuries and most importantly the CCTV footage produced by the victim (which is not disputed by the concerned Police as it has remained silent and absent before the Commission) clearly show prima facie the facts are otherwise.

Even for a second moment the Police version that there was exchange of some words between the victim and the concerned PI, the fact remains as per the report of the Superintendent of Police himself that the said Police Inspector Shri. Patil has used physical force more than necessary on the victim Shri. Vijayraj Wagh and as such in fact the report shows that the said Police Inspector along with other staff were suspended

(which has been later recalled). Apart from this prima facie admission on the part of the Superintendent of Police, the brutality of assault on the victim is apparent from the medical records. The medical records show that there was fracture of left arm at lower end radius, fracture of middle phalynx of index finger of left hand, multiple bruises on the back and buttock, waist, calf and thigh. The photographs of the victim clearly indicate that these injuries especially on the back were caused by hard, blunt and long instrument. The Commission finds that this type of injuries to the back cannot be caused to a person while just running away and falling, as stated by the Superintendent of Police in his report to the Commission.

More inhuman conduct of the Police Officials is visible in the CCTV footage produced by the complainant. The Commission has looked into the said footage and in whcih the date and time can be confirmed which is early hours of 09.04.2016. In this CCTV footage at about 2.10 a.m. it is seen that a person is dragged out of the Police vehicle and was thrashed with police sticks. This part of the incident is totally silent in the report filed by the Superintendent of Police. It is to be noted that even if assuming that the victim had altercation with the Police near his hotel around 11.30 p.m. and thereafter he was taken to the Police Station and after his alleged causing damage to the public property and assault (not proved) on the Police Officials, there is no reference in the report to the assault around 2.10 a.m. near the hotel of the victim.

Taking into consideration all these material placed before the Commission, prima facie it is to be noted that the report filed by the Superintendent of Police dated 08.07.2016 is either totally false or made up of an imaginary incident. As stated earlier even accepting the Police case

as it is, and as found by the Superintendent of Police himself, the said Police Inspector Shri. Patil and others have used excessive force on the victim – apparent from the CCTV footage, medical certificate and the photographs, the Commission is of the view that there was total violation of human rights of the victim by the concerned Police Officials by brutally assaulting him with Police lathis / sticks at least around 2.10 a.m. on 09.04.2016.

Inspite of number of direction passed by Hon'ble Supreme Court and High Courts and Human Rights Commission, the Police in the instant case have gone beyond their power and brutally assaulted the complainant / victim.

As such the Commission finds there is a serious violation of human rights of Shri. Vijayraj Wagh on 09.04.2016 committed by Police Inspector Shri. Patil and some of the staffs like Head Constable Shri. Anil Ahire, Police Constable Bhaskar Sonawane, Police Constable Smt. Shital Gaikwad and many more as seen in the CCTV footage and reported by Superintendent of Police. As such the Commission deems it proper to make following recommendations:

- A) The State / Home Department shall hold inquiry and take immediate severe departmental action against the officials involved in the assault.**
- B) Initiate departmental action against Shri. Ankush Shinde – Superintendent of Police, Nashik for furnishing incomplete / contradictory report to the Commission as well as apathy**

shown in not attending the Commission hearing on the dates notified.

- C) Taking into consideration the brutality of the assault the Commission deems it proper to award a interim compensation of Rs. 1 Lacs to the victim Shri. Vijayraj Kisan Wagh which shall be paid by the State within four weeks from the date of receipt of the order and report compliance in three weeks thereafter.**

All these recommendations are to be complied within four weeks from the date of receipt of the order and compliance report shall be filed within three weeks thereafter.

**(Justice S. R. Bannurmath)
Chairperson, SHRC**



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SHRC/SRB/ /2017/

Date:

DIVISION BENCH

Case No. – 4084/2016

Name of the complainant : Jinal Vencil Miranda
4/405, Tulips Bldg.,
Sai Baba Vihar Complex
Nr. Muchhala College
Anand Nagar, G B Road,
Kasarvadali PO,
Thane (W) – 400 615

Vs.

Name of the Respondent : The Inspector General of Police (Prisons)
Central Building
Pune

The Superintendent
Nashik Road Central Prison
Nashik

Date : 7th April 2017

Coram : Justice S. R. Bannurmath, Chairperson
M A Sayeed, Member

ORDER

This complaint by Mrs. Jinal Vencil Miranda is in respect of the alleged brutal assault by the Jail Authorities on her husband Vencil Roy Miranda a convict prisoner lodged in Nashik Road Central Prison.

The allegations are that her husband (victim) is serving life imprisonment in Nashik Road Central Prison since his conviction on

27.08.2014. It is alleged she learnt that on 24.12.2016 he was brutally assaulted by the Jail Officials and in this regard when his Advocate went to check / visit the prisoner he was not allowed to do so. As such on 27.12.2016 she personally went but initially she was not allowed to meet and after much persuasion he was brought to the visiting room. It is alleged that she personally saw that her husband was severely beaten due to which his face was swollen, right eye was blue and was even unable to walk properly. He informed her that he had assault marks all over the body but could not show them to her. He even requested to her to approach proper authority in this regard. Hence, it is prayed that proper action be taken against the violators of human rights.

It is to be noted here itself that as the complainant presented the case to the Hon'ble Chairperson in person on 30.12.2016, the Commission felt it necessary to look into matter and as such by the order dated 31.12.2016 directed the Spl. Inspector General of Police, Investigation Wing, MSHRC to depute an officer not below the rank of Superintendent of Police to immediately visit the Nashik Central Prison and make inquiry including recording of the statements of the victim, the Jail Authorities, getting medical check-up and report if found necessary and submit a report. In the meanwhile the report from the Superintendent of Jail was also called for.

On 01.01.2017 the Superintendent of Police, MSHRC visited the Prison and after holding inquiry, a detailed report along with documents is submitted to the Commission. On 07.02.2017 report from the Inspector General of Prison, Pune is also received.

The Jail Authorities had reported that on 24.12.2016 at about 2.50 p.m. when the Jail Officials were taking round, suspecting suspicious movement of the victim went to his barrack and at that time the victim who

was holding a mobile phone broke the same and tried to dispose of in the toilet in the presence of the officials themselves. As such after restraining him the mobile phone was taken out of the toilet and then when he was produced before senior Jail Officer Shri. Phad and was being inquired, suddenly he assaulted Shri. P D Babbar, Jail Official causing him injuries. It is alleged that the other officers present tried to restrain him but he was shouting abuses and threats against the Prison Officials. As such using mild force he was pacified. It is stated that as per the procedure since he was found in possession of prohibited article (mobile phone), a criminal case in crime No. 652/2016 for the offences u/s. 188, 353, 332 IPC and other provisions of Prison Rules is registered. So far as the allegation of not allowing the Advocate to meet the victim on 24.12.2016 is concerned it is stated that as the Advocate Shri. Gunjal had not produced copy of the authorization / Vakalatnama, he was not permitted to visit or speak with the victim as per the rules. It is also stated that the allegations of not permitting the complainant to visit her husband is incorrect. In respect of the allegations of injuries on the prisoner it is stated that on 01.01.2017 he was got examined by the Doctor and proper care is taken. In conclusion it is stated that there is no violation of any human rights as the prison authorities are following strictly the procedure as per the prison manual and hence it is stated that the present complaint is false only to suppress the illegal conduct of her husband and to bring pressure on the prison authorities.

It is to be noted that the report of the Superintendent of Police, Investigation Wing, MSHRC is otherwise. The Superintendent of Police has recorded the statements of the victim and the officials, taken photographs of the victim showing the injury marks all over his body as well

as got him produced before a medical officer and obtained injuries certificate. The bare look of the photographs made available in the form of video recorded CD, it is apparent to the naked eye that the victim was beaten mercilessly all over his body. The Chief Medical Officer who examined the prisoner has noted following injuries – Blunt trauma on right scapula, mid back, left posterior arm, right and left calf muscles, left iliac region, left elbow, both gluteal region, redness below right eye, both posterior aspects of thigh and abrasion behind right ear.

After going through the records as the Commission found truth in the allegations of assault, Commission directed the Inspector General of Prison Dr. Upadhyay to be present at the time of hearing along with the Jail officials.

The matter was taken up for hearing on 28.02.2017 at which time Dr. Bhushan Kumar Upadhyay – Addl. Director General (Police) and Inspector General of Prisons, Pune and Shri. Ramesh Kamble – Superintendent – Nashik Road Central Prison are present with records.

The Commission has perused the report and the records in detail and questioned the Superintendent of Nashik Prison.

It is to be noted at the outset that the Commission is not going into the allegations and counter allegations leading to the alleged assault on the victim since there are contradictory versions. But what is relevant for the purpose of the inquiry is whether the prisoner was assaulted / beaten mercilessly as complained and shown from the inquiry conducted by the Superintendent of Police, Investigation Wing, MSHRC thereby violating his human rights or whether the explanation regarding the injuries given by the Jail Authorities is acceptable.

At the outset it is to be noted that there are two versions as to the actual place of the incident itself. According to the Jail authorities after the prisoner was found in possession of a mobile phone and tried to dispose of the same by breaking and throwing it in the toilet in the barrack and as such he was brought to the office and while the Sr. Jail Officer Shri. Phad was inquiring with the prisoner, suddenly the prisoner held collar of Shri. P D Babbar another Prison Officer and threatened and assaulted him. It is stated in the report that he even pushed some other officials also and as such by using “**mild force**” he was subdued. It is to be noted this alleged use of mild force is unbelievable on the face of the nature of injuries as certified by the doctor (during the inquiry by the Investigation wing, MSHRC) which also can be actually seen in the video recording produced by the Superintendent of Police, Investigation Wing, MSHRC. The Commission has seen the actual injury marks and has to hold that the prisoner was beaten black and blue all over the body. The injury marks caused on 24.12.2016 were still visible on 01.01.2017 when the investigation wing of the MSHRC inquired with him and recorded the videograph, so also the medical certificate issued by the doctor on that day after examining the victim. By no stretch of imagination the injuries can be caused by the alleged “**mild force**”. The injuries are apparently caused by hard and blunt substance like sticks.

Apart from the same, it is to be noted that there is apparent cover up of the actual incident also. Though the Prison report states that the officials Shri. N S Ahire, and Shri. S B Khartode while taking rounds noticed suspicious movements of the victim in Room No. 72 wherein he was lodged and was found to be in possession of a mobile phone, which he tried to destroy by throwing the same in the toilet inside, and as such he

was brought for inquiry in the office wherein he was restrained by mild force, however, the statement of Shri. Pradeep Kumar Babbar the Jailor Grade – II who is alleged to have been assaulted by the prisoner gives a different location. According to him while he was outside or in front of the office he saw the said Shri. Kharmode and Ahire bringing the victim near the tower and at that time when he was making inquiry the victim abused and assaulted him. Thereafter, as per the directions of the Senior Officer Shri. Phad the prisoner was sent to quarantine yard. By this it is clear that the assault on said Pradeep Kumar Babbar was outside the office and whereas the report of the Superintendent of Police is inside the office wherein the alleged “**mild force**” said to have been used. During the inquiry by the Commission when questioned Superintendent of the Jail stated that both locations are at different places. As such it appears that different versions are forthcoming even as to the place of assault on Shri. Babbar – Jailor and the use of “**mild force**” on the victim. Apart from this according to the Jailor Shri. Babbar immediately got examined by the medical officer for the alleged injuries caused to him by the prisoner. In this regard a medical certificate of the Chief Medical Officer, Nashik is produced which is dated 29.01.2017, almost a month later. This creates a doubt as to the alleged reason for using the mild force against the prisoner victim. As such there appears to be some suppression of true facts by the Jail Authorities.

Be that as it may, even accepting the version given by the jail authorities regarding the alleged finding of a mobile phone with the prisoner and even accepting that there was some altercation between him and the jail officials, by no stretch of imagination the injuries noticed on the prisoner can be called as “**caused by mild force**”. To the naked eye these injuries

are very severe and possibly as per the Doctor's certificate caused by hard and blunt objects. The mild force cannot be imagined with the actual injuries noticed from the videographs. These injuries are clearly severe and almost brutal force is used on the prisoner.

The type of injuries which are stated to be simple injuries by the doctor cannot be a reason to hold that they are not by brutal attack. The nature of injuries whether simple or grievous can be only as per the provisions of Sec. 326 IPC. But by that fact itself it cannot be said that the so called mild force used resulting in such injuries can be ignored.

It is to be noted that time and again the Hon'ble Supreme Court and the Universal Declaration of Human Rights Article – 5 prohibits and deprecates such inhuman conduct even against the prisoners, it is unfortunate in the present case the concerned jail officials have resorted to assault a unprotected prisoner and thus, this is a clear case of violation of human rights by them.

After careful consideration of the entire material on record, the Commission holds that there is a serious violation of human rights of the victim Shri. Vencil Roy Miranda and as such makes following recommendations:

- A) The State and Inspector General of Prisons are directed to sensitize all the prison officials regarding the protection of human rights of the prisoners in their custody by strict implementation of various guidelines issued by the Hon'ble Supreme Court and National and State Human Right Commissions.**
- B) The State and Inspector General of Prisons are directed to take serious disciplinary action against the concerned Prison**

officials responsible for the assault on the victim Vencil Miranda.

- C) The State is directed to transfer the prisoner Vencil Miranda to any other prison forthwith.**
- D) The State to award an compensation of Rs. 25000/- to the victim within four weeks from the date of receipt of order.**

**(M A Sayeed)
Member, SHRC**

**(Justice S. R. Bannurmath)
Chairperson, SHRC**



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SHRC/SRB/ /2016/

Date:

Case No. – 791/2016

Name of the complainant : Subhash Bandu Zagde
Executive Engineer
2, Siddhivinayak Apartment
Anket Nagar, Paund Road,
Kothrud, Pune – 411 038

Vs.

Name of the Respondent : The Director General of Police
Anti – Corruption Bureau,
Worli Police Camp, Sir Pockhanwala Marg
Worli, Mumbai – 400 030

Shri. Sunil Kalgutkar
Dy. Superintendent of Police
Anti- Corruption Bureau,
Worli Police Camp, Sir Pockhanwala Marg
Worli, Mumbai – 400 030

Date : 27th April 2017

Coram : Justice S. R. Bannurmath, Chairperson

ORDER

This is a strange case of one public servant complaining against violation of his human rights by another public servant.

The complainant is Shri. Subash Zagade the then Executive Engineer working in Raigad Irrigation Department, Kolad, District Raigad. The allegations as per the complaint are as follows:

While the complainant was working as the Executive Engineer the department had accepted two tenders of Shri. Sachin Salunkhe and M/s. A D Engineer for 8 and 7 works respectively and work order was also issued. It is stated that said Shri. Sachin Salunkhe had completed the four jobs as there was some mistakes / lacuna in the drawing submitted by him the complainant had ordered for payment of Rs. 29,800,051/- and instructed the office to make payment for the remaining eight works only after correct drawings are submitted. It is alleged that inspite of repeated instructions said Shri. Salunkhe did not furnish the corrected drawings and as such the amount payable to him was kept in deposit. It is alleged that in this regard said Shri. Salunkhe tried to bring pressure and threat to the complainant and his staff. In this regard it is alleged that the said Salunkhe threatened the complainant to make immediate payment or else he will see that by lodging a complaint, the anti corruption bureau will arrest him.

In this regard it is stated that on the basis of a false complaint given by said Salunkhe, Shri. Kalgutkar – Dy Superintendent of Police Anti Corruption Bureau started inquiry against the complainant and in this regard on 02.06.2015 Shri. Kalgutkar took the complainant forcibly to the Panvel Government Guest House and there started enquiry as to why cheques have not been paid to Shri. Salunkhe and where are the cheques at present. It is alleged that his mobile phone was ceased and after threatening the complainant he was asked to call his official to get the cheque. It is stated that after some time one Shri. Lad official working with the complainant brought the cheques and after making the complainant to hand over the same to said Shri. Salunkhe, the complainant was released. It is stated that for no fault of his, under the influence of the contractor Shri. Salunkhe, Shri Kalgutkar had misused his powers of being in anti corruption bureau not only forcibly took the complainant to Panvel Government Guest House detained him illegally without proper procedure and made him to hand over the cheques to the said contractor Shri. Salunkhe, thereby his human rights are violated.

After going through the complaint the Commission deemed it proper to call for the report from the Director General, Anti Corruption Bureau, Mumbai. A detailed

report after inquiry was filed by the Anti Corruption Bureau. The report prima facie indicated that the allegations made in the complaint are found to be true viz. the complainant was taken by Shri. Kalgutkar forcibly in a private vehicle to Panvel Government Guest House, detained him till the cheques of Shri. Salunkhe were brought and handed over to Shri Salunkhe who was present all along. It is stated that as the allegations of misuse of power has been found, departmental enquiry will also be conducted.

Since prima facie as per the independent inquiry ordered by the Director General, Anti Corruption Bureau showed that there was illegal act and violation of human rights of the complainant by the said Shri. Kalgutkar, as per Section 16 of the Protection of Human Rights Act, 1993, copy of the complaint and the report were sent to him for his reply.

A detailed reply was received from said Shri Kalgutkar and the case was taken up for hearing. The case was heard on number of occasions during which time both the sides filed number of documents.

The gist of the reply which runs in about 30 pages is against the conduct of the complainant himself. It is stated that the complainant has filed the present complaint to the Commission in collusion with the then Superintendent of Police Shri Dattatray Karale – Anti Corruption Bureau, Thane only to see that the corrupt activities of the complainant should not be exposed. The said Shri. Kalgutkar has stated that on the information received from various social workers in the year 2015 he was entrusted with inquiry in respect of alleged Balganga Dam Project Scam. In this connection for the first time he met the complainant and it was observed that he was not co-operating with the enquiry in the scam. It is stated that on 19.05.2015 one Shri. Salunkhe, contractor approached him with the complaint against the complainant Shri. Zagade, alleging demand of illegal gratification of Rs. 20 lacs for disbursing the cheques to the said Shri Salunkhe. In this regard after following due procedure on 20.05.2015 a trap was laid but as the said Shri. Zagade did not make any demand of money, and as such the trap was failed. It is stated that on the next day he informed Shri. Karale the

Superintendent of Police, Anti Corruption Bureau regarding the action initiated by him against Shri. Zagade. It is alleged that at that time Shri. Ghadge - Superintendent of Police and Shri. Mohite – Reader were present and Shri. Kalgutkar without knowing their closeness with the complainant Shri. Zagade spoke about the trap.

It is stated that on 21.05.2015 on learning that Shri. Zagade was going to meet Collector, Raigad in respect of DCP meeting and was coming back to Kolad again trap was laid but that was also futile. On 22.05.2015 in respect of the alleged corrupt practice of Shri. Zagade was being inquired, Shri. Kalgutkar learnt from Shri. Jaiswal, Divisional Accountant that the cheques of Shri. Salunkhe have been not disbursed at the instructions of Shri. Zagade. As such once again a trap was laid on 25.05.2015 which also did not materialize. This failure of traps as per panch witnesses, there was no demand made at all by Shri. Salunkhe in their decoy presence.

It is alleged on 02.06.2015 in this regard though said Shri. Salunkhe was directed to meet Shri. Zagade at Kokan Bhavan Office, it is stated that as said Zagade suspected the trap took said Salunkhe to the Police Chowky in the ground floor. Since Shri. Salunkhe called him (Shri. Kalgutkar), he went along with mazahar panch witnesses again to trap Shri. Zagade and enquiry as to the cheques due to Shri. Salunkhe for which Shri. Zagade told him that no doubt there was some amount due to Shri. Salunkhe. On enquiry by Shri. Kalgutkar, he was informed that the cheques were at Kolad Office. It is stated that Shri. Zagade explained as to the non-furnishing of the cheques because of the incomplete process and promised that the cheques will be disbursed to Shri Salunkhe on that day only. It is stated that as there were many people in the Police Chowky, for further action of trap procedure Shri. Kalgutkar decided to hold the proceedings at Government Guest House Panvel which is about 15-20 kms. It is stated that he has reported his action to his superior Shri. Karale and also to Shri. Pravin Dixit the then Director General of Police. Incidentally, it is mentioned that Shri. Karale expressed his unhappiness for the action taken by Shri. Kalgutkar. It is stated that after drawing panchnama the cheques which were obtained from the office of the complainant, were returned to the contractor Shri. Salunkhe.

It is to be noted that in this reply filed to the Commission the said Shri. Kalgutkar has practically admitted the allegations of taking the complainant Shri. Zagade from Kokan Bhavan Office to Panvel Government Guest House, getting the cheques from the Kolad Office and handing over the same to Shri. Salunkhe. In this regard he has tried to justify his action by bringing it to the notice of the Commission several irregularities and illegalities including corrupt practice of Shri. Zagade and stated that if he had not taken the action against Shri. Zagade the illegalities and corrupt practice by him would be continued.

In the additional replies submitted by the said Shri. Kalgutkar during the hearings, in addition to his stand as to the corrupt practice of Shri. Zagade and thereby justifying his action, said Shri. Kalgutkar has raised question regarding conduct of his superior officer Shri. Karale the Superintendent of Police (ACB), Thane and Shri Ghadge - Superintendent of Police. It is alleged that the said officers had colluded with the present complainant Shri. Zagade and have filed false report to the Commission. It is to be noted in this regard the said Shri. Karale the then Superintendent of Police (ACB) and Shri. Ghadge the then Dy Superintendent of Police have filed independent statements denying and contraverting each and every allegations made against him.

On going through the entire bulky records thoroughly and in depth and after hearing both the sides present during the enquiry before the Commission, at the outset it is made clear that the Commission is not going to enquire about the alleged corrupt practice or conduct of Shri. Zagade especially in respect of the alleged withholding of cheques of Shri. Salunkhe the contractor. The Commission is also not going into the question whether out of animosity the then Superintendent of Police, Dy Superintendent of Police have been supporting the complainant against Shri. Kalgutkar, as the same is outside the purview and jurisdiction of this enquiry.

The only question to be considered by this Commission from the point of view of violation of human rights by a public servant, is that (a) whether the complainant was forcibly taken to Panvel Government guest House by Shri. Kalgutkar in his private car, (b) whether he forced the complainant to get the cheques from his Kolad Office and

handover the same to Shri Salunkhe the contractor and (c) whether the action is beyond scope and jurisdiction.

It is to be noted that forcing a person and taking him to another place and making him to perform official duty outside his office under threat or force is a clear case of violation of human rights of that person, apart from being offences under IPC also.

On going through the entire records and especially the very admission of Shri. Kalgutkar discloses following undisputed facts

- a) That the traps laid against Shri. Zagade by Shri. Kalgutkar, Dy Superintendent of Police (ACB) on the basis of complaint given by Shri. Salunkhe regarding demand of illegal gratification of Rs. 20 Lacs have failed, prior to 02.06.2015.
- b) That on 02.06.2015 the complainant was taken by Shri. Kalgutkar from the Traffic Police Chowky at Kokan Bahvan to Panvel Government Guest House in the private vehicle of Shri. Kalgutkar.
- c) That the complainant was directed to secure the cheques from his office at Kolad through Shri. Lad (Official working with the complainant) and
- d) That only after securing the same the cheques were handed over to Shri, Salunkhe the Contractor who had followed the complainant and Shri. Kalgutkar right from Kokan Bhavan to Panve Government Guest House.

It is to be noted that these undisputed facts emerged from not only from the complaint or the report received from the Director General of Police (ACB) but also the reply filed by the said Shri. Kalgutkar before the

Commission. He himself has produced various records and even the statements of panch witnesses in the earlier failed traps.

It is to be noted that even as per the say of Shri. Kalgutkar though on 19.05.2015 on the basis of written complaint of Shri. Salunke against the complainant Shri. Zagade for demanding bribe of Rs. 20 Lacs there is no material to show that any case was registered or FIR was drawn. Even otherwise as per the said Shri. Kalgutkar and the panch witnesses and the panchnama drawn though traps were laid on 20th, 21st, 22nd and 25th of May 2015, the traps were unsuccessful because there was no demand of illegal money made by the said Shri Zagade, in the presence of panch / decoy witnesses. Even on 02.06.2015 while Shri. Zagade the complainant was at Kokan Bhavan the trap failed. As such prima facie taking the complainant in his car to a guest house, detaining him till the cheques were brought from Kolad Office and handing over the same directly to the contractor, who was present all along appears to be an action beyond procedure prescribed under prevention of Corruption Act.

In this regard the statement of the complainant is that on number of occasions the said Shri Salunkhe was after the complainant to give the cheques which were detained because of the non submission of proper drawings. It is stated by the complainant that inspite of repeated communication since there was failure on the part of the contractor to comply with the requirement of completing the tender work procedure the complainant had informed the concerned to withhold the cheque and keep the same in Government Deposit till the defaulting contractor complies with submission of corrected / amended drawings.

In so far as the date of incident is concerned it is stated by the complainant that on 02.06.2015 while the complainant was in Kokan

Bhavan, the said Shri. Salunkhe, contractor accosted him and started pestering for issuance of cheques and even threatened the complainant. Being afraid of possibility of physical assault, it is stated he went to the Traffic Police Office in the ground floor to lodge a complaint. When he asked the concerned Police to register a case, he was told that as it is only a Traffic Police Chowky and he has to lodge a complaint with the regular Police. According to the complainant as he was scared, he called the concerned Police on police help line No.100 seeking Police protection and he was informed that Police will come shortly. In the meanwhile it is alleged Shri. Kalgutkar obviously on call by Shri. Salunkhe came there and started questioning him as to non-disbursement of the cheque of Shri. Salunkhe. In spite of explanation it is stated Shri. Kalgutkar asked as to where the cheques are kept and on informing that they are at Kolad Office he seized complainant's mobile phone and made him to sit in Shri. Kalgutkar's private car and left the place. On the way he gave the mobile phone to the complainant to call and ask his official Shri. Lad to bring the cheques at Panvel Government Guest House. After reaching Panvel Government Guest House and impatiently waited for Shri. Lad to get the cheques and ultimately after arrival of Shri. Lad with the cheque the complainant was made to hand over the same to said Shri. Salunkhe who was present over there.

These facts practically remain unchallenged by the said Shri. Kalgutkar so far as going to the Police Chowky at Kokan Bhavan, taking the complainant to Panvel Govt guest house, getting the cheques from Shri Lad from Kolad Office and making the complainant to hand over the same to Shri. Salunkhe the contractor at the Panvel Guest House. Even otherwise from the statements of Shri. Motiram Vasave – Police Inspector,

ACB, Raigad, Shri. Laxman Kashiram Lad – Sr. Clerk, Raigad Irrigation Department, Kolad, the driver of the Government Vehicle who took Shri. Lad to the Panvel Government Guest House show that the said Shri Kalgutkar took the complainant to Panvel Government Guest House and at Panvel Government Guest House he was made to call Shri Lad to get the cheque from Kolad office. In this regard the evidence of independent panch witnesses Dr. Makrand Patil and Dr. Dyaneshwar Arsale, Shri. Mahesh Patil Police Naik ACB clearly show these aspect at Panvel Government Guest House.

It is to be mentioned here again that said Shri. Kalgutkar has before this Commission tried to justify his action by raising allegations against the working of the complainant Shri Zagade and especially the alleged corrupt practice by him. This Commission will not go into that aspect as to whether there were irregularities or illegalities committed by the complainant Shri. Zagade while working at the Irrigation Department and whether there is a corruption. However, the fact remains that on the basis of the complaint, said to have been lodged by Shri. Salunkhe the contractor against the complainant, Shri. Kalgutkar has tried to trap him four times and all the times the trap failed as there was no demand made by the complainant.

This repeatedly failed exercise by Shri. Kalgutkar has resulted in the incident dated 02.06.2015 in taking the complainant to the panvel govt guest house, making him to get the cheques kept in the office at Kola through the Sr. Clerk Shri. Lad and after getting the same handing the cheques to Shri. Salunkhe the contractor.

While making it clear as to the Commission is not going into the merits of complaint of Shri. Salunkhe or the act of complainant as to the

non disbursement of the cheque earlier or even the correctness or otherwise of the allegations of corruption against the complainant made by Shri. Kalgutkar, the Commission is only concerned with whether there was an incident on 02.06.2015 When Shri. Kalgutkar took the complainant to Panvel Government Guest House in his vehicle, making him to wait till the complainant gets the cheque from Kolad office through Shri. Lad and then handing over the same to Shri. Salunkhe. These acts of the said Shri. Kalgutkar prima facie amount to abduction and wrongful restrain or wrongful confinement and illegal act of forcing him to part with official cheques inspite of objection raised earlier. This action of said Shri, Kalgutkar also amounts to serious violation of the human rights of the complainant in as much as by misuse of power the said Shri. Kalgutkar has forcibly taken the complainant, confined him for some time in Panvel Government Guest House and released him only after the complainant secured the cheques from his Kolad office and handed over the same to the contractor Shri. Salunkhe. The Commission is of the view that even accepting for a moment the contentions raised by the said Shri. Kalgutkar that complainant was at fault in non disbursing the cheques to Shri Salunkhe the contractor and inspite of traps, as the complainant was not giving the cheques to Shri. Salunkhe, he had laid fresh trap on 02.06.2015. It is noted that if trap was laid, Shri. Kalgutkar should have proceeded with the same. But on the other hand he has taken law in his hand by getting the cheques from Kolad Office to Government Guest House and handed over to the contractor. It is not as if such contractor had remedy to recover the amount due. As such even collusion between the contractor Shri. Kalgutkar is apparent. The Commission is of the view that said Shri. Kalgutkar a responsible – Dy Superintendent of Police of ACB has not only

misused his power as a public servant and violated the most important human rights of the complainant.

After consideration of entire material the Commission is of the view that the said Shri Kalgutkar – Dy Superintendent of Police of ACB a public servant has violated the human rights of the complainant Shri. Zagade. As such the Commission makes following recommendations.

- A) The State Government is directed to hold an enquiry and to take appropriate disciplinary action against Shri. Kalgutkar, Dy Superintendent of Police of Anti Corruption Bureau for the violation of human rights.**
- B) Since the human rights of the complainant are violated by a public servant, the Commission deems it proper to award an interim compensation of Rs. 1,00,000/- to be paid by the State within four weeks from the date of receipt of order. It is made clear that after payment of compensation it is open for the State to recover the same from said Shri. Kalgutkar, Dy Superintendent of Police of Anti Corruption Bureau.**

(Justice S. R. Bannurmath)
Chairperson, SHRC



MAHARASHTRA STATE HUMAN RIGHTS COMMISSION

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SHRC/SRB/ /2016/

Date:

Case No. – 3299/2013-14

Name of the complainant : Madhukar Kavduji Itankar
Netaji Ngar, Plot No. 85,
Kalmana Area, Nagpur – 440 008.

Vs.

Name of the Respondent : The Dy Commissioner of Police
Zone – III
Nagpur

The Sr. Police Inspector
Ramteke Police Station
Kalmana, Nagpur City
Nagpur

Date : **24th May 2017**

Coram : **Justice S. R. Bannurmath, Chairperson**

ORDER

This complaint by Shri. Madhukar Kavduji Itankar of Nagpur is in respect of alleged illegal action including illegal detention, assault of his minor son by name Shri. Venkatesh by the Police Officials of Ramtek Police Station, Kalmana, Nagpur.

It is alleged that there is a dispute between the complainant on one hand and his mother and brothers on the other in respect of the family property. In this regard it is stated that often there are quarrels and the mother is in the habit of lodging false complaints against the complainant and his family members.

In this regard it is stated that on 11.09.2013 a false complaint of theft was given against his son Venkatesh by his mother Smt. Indubai and brother Shri. Ganesh.

As such Shri. Surendra Raut the then Police Sub Inspector who is neighbor of the complainant called complainant's wife and son to the Police Station on the next day at 7.00a.m. It is stated that during this time the complainant was out of state and was to return on 17.09.2013 to Nagpur. It is further alleged that in view of the call from the Police the wife and son went to the Police Station wherein Shri. Raut informed them that there is a complaint of theft of a gold ornament belonging to Smt. Indubai (mother of the complainant) and started questioning the boy. It is alleged that when the wife and son denied the allegations of theft, the boy was taken to a separate room and was assaulted. After sometime he was also taken to the House alleged to be for search and recovery of the gold jewelry. It is stated that after sometime the boy was brought to the police station and police abused and assaulted him again and were demanding to confess. It is stated that out of fear the boy confessed and after sometime they were let off to go from there. This incident came to the knowledge of the complainant on his getting information about the same from the wife and after coming back to Nagpur he tried to lodge a complaint with the police and when it did not take any action he also informed the Commissioner of Police on 30.09.2013 but no action has been taken. According to the complainant as his son was minor taking him to police station illegally detaining for few hours and even assaulting in respect of a theft case, that too in the absence of any FIR register is illegal and violative of the rights of the complainant's son. It is also stated that the mental health of his son is affected due to the Police atrocity. In this regard the complainant has produced the birth certificate of his son and also photograph showing assault marks on the palms of the minor.

On going through the complaint as there was prima facie material against the Police, report from the Commissioner of Police, Nagpur was called for and a detailed report is filed by the Dy Commissioner of Police, Zone – 3, Nagpur, denying the allegations. It is reported that no doubt on 11.09.2013 Smt. Indubai Itankar gave a report that a gold ornament valued of Rs. 10,000/- was stolen by her grandson Shri. Venkatesh (son of the complainant). Accordingly, on the basis of the report the said PSI Shri Raut asked the said Shri. Venkatesh and his mother to be present in the Police Station. It is stated that when the said PSI was making enquiry the complainant called on his phone and said that the complaint given by his mother is false. It is reported that

at that time Smt. Indubai gave in writing that she does not want to press the charges of theft and accordingly, the boy was let out to go. It is stated that neither there was any assault or abuse on the boy. According to the inquiry held by the Dy Commissioner of Police during the relevant time one Shri. Shaikh Iqbal an Auto Driver was present in the Police Station and he has stated that no such assault or abuse on the boy was done by any Police Officials. Similar, is the statements of Police Constables present in the Police Station. It is alleged that because the son and wife of the complainant were called to the Police Station, feeling insulted the present complaint is given. Incidentally, it is mentioned that the boy was in the habit of committing theft. So far as the injuries as per the photograph are concerned it is stated that the same appear to be doubtful as it was taken by the daughter of the complainant and there is no indication of any date or time in the said photograph. It is also stated that there is no acceptable medical evidence like treatment from a medical officer is produced by the complainant to the case of assault. On these among other grounds it is stated that the allegations are all false and be closed. The Dy Commissioner of Police along with the complaint has produced records including the statements of various persons recorded during the enquiry by him.

The copy of the report was sent to the complainant who by way of reply has reiterated his allegations and has produced some documents.

The matter was heard on number of occasions in the presence of the complainant and the concerned Police Officials.

On hearing both the sides and going through the entire records at the outset it is to be noted that Shri. Venkatesh who was a minor is alleged to be victim of the Police atrocity. There is no much dispute on the side of the Police that there was a written complaint from Smt Indubai Itankar regarding theft of gold ornament from her house by the minor victim and in this regard he was called to the Police Station along with the mother. It is to be noted that though alleged complaint is received by the concerned Police, admittedly no case / FIR is registered. On the other hand the victim and his mother have been called to the Police Station to make enquiry. It is to be noted

that even accepting the case of the Police that it wanted to satisfy by making inquiry with the boy, the illegality at the outset is not registering an FIR as per the mandatory provision of the Criminal Procedure Code. Further the explanation of the Police that later on as Smt. Indubai Itankar intended to withdraw the complaint by giving in writing does not absolve the Police from the illegality of non-registration of the case. Even this explanation appears to be fragile as the statements recorded during the inquiry by the Dy Commissioner of Police show that not only the Police have inquired (?) with the minor but also have made attempt to recover the gold ornament on the alleged statement (confession) of the minor. According to the statement of the witnesses after inquiry with the minor, he alleged to have stated that he has concealed the stolen article in a land, the Police admittedly took the boy to the place for search and seizure of the stolen article. It is pertinent to note that even at this stage there was no FIR registered nor is there any entry made in the Station Diary so as to the initiate enquiry on the complaint of Smt. Indubai Itankar or the alleged disclosure of theft and concealing the property by the victim boy on the basis of which a Police Constable takes the boy to the place alleged to have been stated for the alleged recovery of gold ornament. Incidentally it is to be noted that there was no recovery as the ornament was not found. As such it was atleast at this stage a case of theft ought to have been registered. It is also to be noted that admittedly the Police knew that the alleged offender is a minor and as such proper steps as required under the Juvenile Justice Act ought to have been taken. As such the Commission prima facie finds that there was not only illegality but violation of human rights of a minor by the concerned Police in bringing him to the Police Station, detaining and interrogating him.

So far as the allegation of assault is concerned the complainant has produced photograph taken by his daughter of the palms of the victim which show reddish marks on both the palms. The only defense of the Police is that since no medical certificate is produced and even the photograph taken from the mobile does not indicate the date or time, the same is unbelievable. According to the Commission the absence of the medical certificate is concerned it is no much material affecting the merits of the case. Similarly, the non availability of date and time on the photograph taken on the mobile is also ignorable as the noting of date and time depends upon the

make and type of mobile used. The Commission fails to understand as to why the complainant would go to such an extent of creating evidence. Be that as it may even the statements and records by the Police appear to be untrustworthy. The records show that on 11.09.2013 the said Smt. Indubai has given a written complaint of theft which is signed by her and signature of the PSI is also on the same but the say of Police that Smt. Indubai gave only oral complaint. Anyway once a complaint whether oral or written is received as per the provisions of Criminal Procedure Code immediately FIR should have been drawn. The say of the Police that no doubt she complained to the PSI and after the minor with his mother came to the Police Station wherein the complainant Smt. Indubai was present, but at the request of Indubai herself that case need not be registered as it was a family matter again appears to be false. The alleged statement of Smt Indubai not to register a case is dated 12.09.2013 (next day). As such non-registration of a case is the first illegality noticed by the Commission. Further if no case was registered then there was no question of searching for the stolen article that too without proper panchnama in the presence of independent witnesses as is required by the law. It is to be noted that the fact that the PSI was a neighbor of Smt Indubai who has taken a leading role in the alleged calling of the minor to the Police Station, making inquiry with him etc. creates suspicion as to the conduct of the Police Officials concerned. The absence of registering a case on the complaint of Smt. Indubai and not following the proper procedure in the case of a minor alleged to be involved in committing an offence are two major illegalities and violations of the human rights of the respective persons. Added to that the contradictory statements and the efforts made by the Police Officials in an attempt not only to cover up the whole incident but also painting the minor as a habitual offender is apparent from the records.

As such the Commission is of the view that the concerned Police Officials have not only violated the human rights of Shri. Venkatesh the minor son of the complainant but also tried to cover it up with unacceptable statements and records.

After giving due consideration to the entire facts scenario Commission is of the view that there is violation of human rights and as such makes the following recommendations:

- A) The State shall instruct all the Police Officials regarding importance and need of drawing up of a FIR as per the provisions of Criminal Procedure Code.**
- B) The State shall instruct the Police Officials, In charge of Police station the proper procedure to be followed in respect of the incidents of a minor being charged with an offence as per Juvenile Justice Act.**
- C) Since the Commission finds that there is a serious violation of the human rights of a minor Shri. Venkatesh, the State is directed to pay an interim compensation of Rs.50,000/- to the complainant / victim within four weeks from the date of receipt of the order and report compliance within four weeks thereafter.**

With these recommendations case is closed. Ordered accordingly.

(Justice S. R. Bannurmath)
Chairperson, SHRC



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SHRC/SRB/ /2017/

Date:

Case No. – 2328/2012-13

Name of the complainant : **Salamat Ali Jahid Ali Shaikh**
Maharashtra Patang Centre
Shop No B/4, Opp Shamiyana (Sansar Hotel),
90 feet Road, Dharavi,
Mumbai 17

Vs.

Name of the Respondent : **The Dy. Commissioner of Police**
Zone V, Worli Police Station Building
5th Floor, Annie Beasant Road,
Worli, Mumbai 400 018.

Date : **31st May 2017**

Coram : **Justice S. R. Bannurmath, Chairperson**

ORDER

This complaint by Salamat Ali of Dharavi is against Police Officials of Dharavi Police Station alleging illegal arrest and detention in lockup.

According to complainant there is a dispute between him and his elder brother over property rights and in this regard though complained to Police, they are taking side of his brother and do not take any action even when he is assaulted / beaten by his elder brother and his sons.

It is stated that on 08.07.2012 while the complainant was preparing to start tea business in his property, he suspected that his brother and family are going to assault him and as such he informed the Police on his complaint, the concerned Police in collusion with his brother took him to Police Station, registered an non cognizable

case against him and then put him in lockup till next day and let him off around 10.00 a.m. As such alleging violation of his human rights present complaint is filed.

In this regard report from Dy Commissioner of Police, Zone – V is called for and same is received.

Matter was heard in the presence of complainant and Asst. Police Inspector of Dharavi Police Station.

It is the case of the complainant that the Police having colluded with his brother, illegally arrested and detained him till next day. On the other hand as per the report and especially statement of the then Asst. Police Inspector, no doubt on the complaint of brother of the present complainant, the Police had registered a NC case and in this regard the Police were trying to tell the complainant to maintain peace. It is stated that at that time the complainant started making gestures and abusing his brother, by invoking power under Sec. 151 Cr PC the complainant was arrested and put up in lockup and within 24 hours he was released.

It is thus, the Police have tried to justify the action of arrest and detention of complainant invoking jurisdiction under Sec. 151 Cr PC.

At this stage it is necessary to look into the provisions of Sec 151 Cr Pc. On bare reading and keeping in mind various pronouncements in this regard, it is to be noted that the object of this Section is a preventive and not punitive. Section 151 should only be invoked when there is likelihood of any person committing cognizable offence.

In the present case as per Police report since the complainant was arrested when he started abusing his elder brother in the Police Station and waving his hands or making gesture. This act of the complainant by no stretch of imagination can be indicative of the complainant was **designing to commit any cognizable offence**. The provision of Sec. 151 Cr Pc cannot be used at whims and fancy. To arrest a person under Section 151 Cr Pc there must be definite indication of the person to be arrested is designing to commit any cognizable offence. In present case mere abusing or making gestures does not amount to designing to commit any cognizable offence.

It appears either out of over enthusiasm or possible collusion, the concerned Police have misused the power under Section 151 Cr PC in the present case. Thus, the detention even for less than 24 hours becomes violation of human rights of the complainant.

In view of the same the Commission makes following recommendations

A) The State is directed to pay an interim compensation of Rs. 10,000/- to the complainant in four weeks from date of receipt of the order and report and compliance in two weeks thereafter.

With these directions case is closed. Ordered accordingly.

(Justice S. R. Bannurmath)
Chairperson, SHRC



MAHARASHTRA STATE HUMAN RIGHTS COMMISSION

9, Hajarimal Somani Marg, Opp. Chhatrapati Shivaji Terminus (VT), Mumbai - 400 001

Tel : 2207 8962, 2205 0791 Fax : 2207 8962 Website : <http://mshrc.maharashtra.gov.in>

SHRC/SRB/ /2017/

Date:

Case No. – 1638/2012-13

Name of the complainant : **Shaikh Mobin Shaikh Samed**
R/o Nandura (Taj Nagar Ghaslet Pura)
Tal- Nandura, Dist- Buldhana

Vs.

Name of the Respondent : The Superintendent of Police
Buldhana

Date : **8th June 2017**

Coram : **Justice S. R. Bannurmath, Chairperson**

ORDER

This complaint by Shri. Shaikh Mobin Samad of Nandura, Dist. Buldhana is in respect of the alleged ill treatment, assault by the Police Constable Shri. Munjal of Nandura Police Station. It is alleged that on 04.06.2012 there was some dispute regarding the parking of a taxi belonging to relative of the complainant and in this regard when he went to the Police Station to inquire about the same, it is alleged that the police constable not only abused him but also physically assaulted him and thereafter a criminal case is registered against the complainant himself. It is stated that on the next day when he was produced before the learned Magistrate, the complainant complained about the alleged assault and after looking into the marks and injuries the Court directed him to be examined by a Doctor and produce a

report. In this regard it is stated that he had requested the Court to take action against the said Constable. It is further alleged that even thereafter some of the Police Officials harassed him because of the complaint lodged against Police Constable. As such it is prayed to take proper action against the erring Police Officials.

In this regard report from the Superintendent of Police, Buldhana was called for and a detailed report has been filed denying all the allegations. It is stated that it was the complainant himself who was obstructing the Police in doing their duty and as such as he became violent and abusive on the complaint of the said Constable a criminal case is lodged in Crime No. 50/2012 for the offence u/s 343, 351, 332, 294 r/w. 34 IPC and Sec. 158 of Mumbai Police Act. As the Commission found there is prima facie material to show that there was over acts by the said Constable, copy of the report was also sent to the complainant who has filed a detailed rejoinder / reply reiterating his allegations. His main grievance is that inspite of clear directions of the Court no action has been taken against the Constable.

On 09.07.2015 at Buldhana Camp Sitting the Commission had heard the matter and had directed the Superintendent of Police present to look into the matter as to why no action has been taken by the Police against the Constable and file a report by the next date.

Today when the matter was taken up for hearing the complainant is present so also Shri. Vilas Patil – Police Inspector are present. Both the sides have heard and perused the records.

On going through the entire records there appears to be contradictory statements as to why the complainant went to the Police Station on 04.06.2012. Keeping that aside so far as the say of the Police as the complainant tried to use force and obstruct the Police Officers in doing their duty, there is a case registered against him and same is pending. But the question is what action the Police has taken against the constable who alleged to have assaulted the complainant. In this regard it is to be noted that after the production of the complainant for remand, he had given complaint to the Court regarding the alleged act of assault, abuse etc. and after hearing both the sides by the order dated 19.06.2012 the learned Magistrate directed the concerned Police to register a case against the Police Constable for the offences u/s 323, 504 and 341 IPC.

Unfortunately, inspite of lapse of nearly five years no action has been taken in this regard. Even in the hearing dated 09.07.2015 the Commission had directed the Superintendent of Police to look into this aspect and take appropriate action as per the direction of the Court. But there appears to be clear defiance to the Court order as well as the directions issued by the Commission. There appears to be a discriminatory treatment is given by the concerned Police to the complainant and its own staff Shri. Munjal – Police Constable. The

finding of the learned Magistrate prima facie establishes the illegal act committed by the Constable. Instead of taking action against the Constable as directed or challenging the order before the higher forum, the concerned Police Officials have slept over the same for the last five years. This conduct of the concerned Police Officials is discriminatory and thus violative of human rights.

In the result the Commission makes following recommendations:

- A) The Director General of Police is directed to inquire into the negligence / apathy on the part of the concerned Police Officials in not taking action against the Police Constable Shri Munjal as per the order dated 19.06.2012 passed by JMFC, Nandura and take appropriate steps.**
- B) Since the Commission finds that there is a violation of human rights of the complainant the Commission deems to award a compensation of Rs. 10,000 / - to be paid by the State within four weeks from the receipt of the order and report compliance of the recommendations with four weeks thereafter.**

With these directions case is closed.

(Justice S. R. Bannurmah)
Chairperson, SHRC



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SHRC/SRB/ /2017/

Date:

Case No. – 2435/2013-14

Name of the complainant : **Shri. Pukhraj Suvalal Singhvi**
Payal Jewellers, Shop No 4,
Ground floor, Sriram Krushna Co-op
Housing Society Maryadit, Phadke Road,
Dombivali (E)

Vs.

Name of the Respondent : **Deputy Commissioner of Police, Zone-3,**
Mahatma Phule Chauk, Behind Court,
Near BSNL Office, Kalyan (W), 421301

Date : **12th July 2017**

Coram : **Justice S. R. Bannurmath, Chairperson**

ORDER

This complaint is by Shri. Pukhraj Suvalal Singhvi – Proprietor of Payal Jewel Shop, Dombivili is in respect of alleged violation of his human rights by the concerned Police.

It is alleged that the complainant is running a jewelry shop for the last more than 20 years. According to him on 30.07.2013 at about 5.00 p.m. the Police Officials of Vishnu Nagar Police Station came to his shop along with two minor boys and he was informed that the said boys (juveniles) have sold the stolen jewelry to his shop. According after holding

mazahar though no incriminating material could be found, he was arrested and thereafter regularly harassed. It is stated that though the alleged offenders were juveniles violating the norms in this regard they were kept in custody. The complainant in this regard has brought to the notice of the Commission a circular No. 41/2009 dated 24.07.2009 issued by the Director General of Police.

It is to be noted that the irregularities and illegal conduct of the Police while investigating the property offences especially involving the recoveries of alleged stolen property (jewelry and ornaments) from the jewelers were brought to the notice of the Hon'ble High Court and thereafter the guidelines by way of circular aforesaid has been issued. The Commission has received many complaints in this regard alleging non-compliance or non-adhering to these circulars by the Police. In the present case also it appears the directions issued by the Director General of Police have not been followed to the letter and spirit. Apart from the same it is noticed that there appears to be further illegality in respect of the records maintained by the concerned Police Station. As per the records (the spot panchnama conducted) the complainant was alleged to have been arrested on 30.07.2013 between 15:15 – 17:00 but the arrest register shows that he was arrested at 2300 hrs. between this periods nearly four hours where the complainant was, is not forthcoming.

The another irregularity noticed is, according to the complainant after his arrest his family members were not informed as is mandatorily required as per the guidelines issued by the Hon'ble Supreme Court in DK Basu Vs. Stat of Bengal. No doubt in the arrest register there is an entry made that the wife of Smt. Meena / son Harshal Jain has been informed

but there is no time of information is mentioned. Incidentally when the Commission looking in the arrest register it is seen that even in some cases such information is not given. Further it is difficult to know when exactly the information has been given. This amounts to not following the guidelines properly.

So far as the allegations of Juveniles being kept in the prison or that one of them was mentally disabled appears to be unsubstantiated.

Taking into consideration all these aspects the Commission deems it proper to make following recommendations:

A) The State and the DGP are directed to see the strict compliance of the circular 41/2009 dated 24.07.2009 in the cases of investigation and process of recovery of the stolen jewelry and other articles from the jeweler and bullion dealers so that the unnecessary harassment to them and also possible corruption is avoided.

B) The State and the DGP shall take steps to strictly implement the D K Basu Guidelines by all the Police Officials.

C) the Superior officers of the concerned Police Station should check the records of the Police station including arrest register regularly and taken if there is regularity or illegality in making the entries in the same.

D) Since the Commission has found that though the complainant was arrested between 1550 – 1700 hrs, as the arrest register shows his actual arrest at 2300 hrs, there is no explanation forthcoming as to where the complainant was there for at least 4 hours prior to the entry. And as it is to be treated as and hence the Commission deems it proper to direct the State to pay an interim compensation of Rs. 50,000/- within four weeks from the date of receipt of the order and also report compliance thereof within six weeks thereafter.

**(Justice S. R. Bannurmath)
Chairperson, SHRC**



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SHRC/SRB/ /2017/

Date:

DIVISION BENCH **CD Case No. – 177/2012-13**

Name of the Intimating Authority : The Dy. Commissioner of Police
(Detection), Crime Branch
Police Commissioner Office,
D.N. Road, Mumbai-400001.

The Joint Director
Central Bureau of Investigation
Bandra Kurla Complex
CBI Buidling, 4th Floor
Plot No. C-35 A, G Block
MMRDA Area, Kalina
Banadra (E), Mumbai - 400 098

Name of the Deceased : Julfar @ Rafiq Kamu Shaikh

Date of Death : 02.12.2012

Date : **12th June 2017**

Coram : **Justice S R Bannurmath, Chairperson**
M.A. Sayeed, Member

O R D E R

(Per : Justice S.R. Bannurmath, Hon'ble Chairperson)

On receipt of the report of death of Zulfar @ Rafiq Kamu Shaikh aged 35 years while in the custody of Dharavi Police Station, the present case is registered.

Reports from the CBI is called for and the same is submitted. Shri. S R Singh, Addl Superintendent of Police, CBI, SCB, Mumbai, Shri. Dilip Sawant – Dy Commissioner of Police (Det.), Crime Branch, Shri.

Pravin Kharade – Asst Police Inspector, Unit V, Crime Branch, Shri. Nandkumar Nair - Superintendent of Police and Head of Branch CBI,SCB, Mumbai and Sr. Public Prosecutor Shri. B Parween Raju (appearing on behalf of Respondent) are present and perused the records.

The brief facts leading to the present inquiry is as follows.

On 29.11.2012 the deceased along with Shri. Inamul Usman Shaikh were apprehended by the API Shri. Irfan Anwar Shaikh and other police officials of Dharavi Police Station, on suspicion of both involved in fake currency offences. On search they were found to be in possession of fake currency to the tune of Rs. 1,20,000/- and accordingly a case in crime No. 369/2012 for the offences under Section 498 (B) (c) r/w. 34 IPC were registered and they were put up in the lock up of the police station. After the accused were produced before the Court they were given in police custody till 05.12.2012. According to the initial police report as the deceased complained of chest pain he was taken to the Lokmanya Tilak General Hospital, Sion wherein he was pronounced dead on arrival. Since it was a case of custodial death initially investigation was entrusted to Crime Branch. However, on the complaint of the Shri. Noor Itwari Shaikh cousin of the deceased who approached Hon'ble High Court of Judicature at Bombay in criminal Writ Petition No. 4476/2012, the Hon'ble Court directed the CBI to make investigation and submit a report. The Hon'ble High Court by its order dated 13.06.2014 directed the CBI to investigate.

The CBI has filed detailed report and also made available the records for perusal. From the records of investigation it is clear that the said API Shri. Irfan Shaikh and Shri. Chandrakant Shirkar – Police Naik of the Dharavi Police Station were responsible for the death of Shri. Zulfar. The Investigation records prima facie disclose that it is because of the third

degree method used by these two police officials the death of Shri. Zulfar took place.

It is stated in this regard the CBI has already registered a case investigated and filed charge sheet on 21.05.2013 before the Addl. C.M.M 37th Court at Esplanade Mumbai.

(From the records available it is seen that inspite of clear directions of the Hon'ble Supreme Court in Sube Singh Vs. State of Haryana, there is apathy on the part of the higher Police Officials of the State whenever such incidents of custodial death in police lock up take. It is made almost mandatory by the Hon'ble Court that in such eventuality the investigation of such custodial deaths must be entrusted to CBI at the first instance. In the present case it is noted that though the death took place in the year 2012 no such attempt has been made by the concerned and only in the year 2014 at the intervention of Hon'ble Court CBI has been entrusted with investigation)

On perusal of the entire investigation material as already noted prima facie the two police officials are responsible for the death of Shri. Zulfar @ Rafiq. No doubt the competent Court will decide as to the criminal liability of these two officials. But before the Commission on the prima facie material, it has to be held that there is serious violation of human rights of the deceased by the prima facie material of inhumane conduct of public servants. As such in these facts and circumstances of the case, the Commission deems it proper to make following recommendations

A) The Director General of Police is directed to sensitize all the Police Officers in the State regarding protection of

Human Rights of the persons arrested and kept in the police lock up.

- B) The State is directed to follow the directions of the Hon'ble Supreme Court in the Sube Singh's Case to the later and spirit in the sense immediate steps of entrusting of the investigation to the CBI is mandatory.**
- C) Since the CBI has investigated and matter is pending before the Court the Commission does not intend to direct the DGP to initiate any disciplinary action against the defaulting officers, however, the Commission deems it proper to direct the State to pay a interim compensation of Rs. 1 Lacs to be paid to the legal heirs of the deceased within six weeks from the date of receipt of this order and submit compliance report thereafter after four weeks.**

**(M.A. Sayeed)
Member, SHRC**

**(Justice S. R. Bannurmath)
Chairperson, SHRC**

