



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>

MSHRC/MAS/08/ 2016/
Date: 29 /08 /2016

MAS/Case No.– 2226/2010-11

Name of the Complainant : Sunil Dnyandevrao Rayne,
Shegaon, Tal. Shegaon,
Dist. Buldhana

V/s.

Name of Respondents : Superintendent of Police,
Buldhana (Rural)

Date : **29th August, 2016**

Coram : **M. A. Sayeed, Member**

ORDER

I have gone through the record and the relevant documents carefully and have heard both the parties at length, in support of their rival contentions. Considering the limited scope of the enquiry, reference to background of the complaint is necessary, in order to ascertain and find out as to whether a case of violation of human rights has been made out against law enforcing agency, who in the present case has been labelled as “Law Breakers”.

1. Gist of the complaint:

Complainant Shri Sunil D. Rayne claims to be running a hotel named and style ‘Rasika Inn & Dhabha’, situate at Shegaon-Khamgaon Road. He is having a valid license to run this hotel. It is alleged that on the night of 12.05.2010 around 11.00 p.m. PI Shri Giri alongwith his team landed at his Inn and demanded food to be serve to all of them. When complainant expressed his inability to serve food as it was closing time and the kitchen was already closed

and at the same time demanded an amount of Rs.20,000/- to allow him to run the hotel for next one year, PI Shri Giri lost his temper, spoke in an arrogant manner and his colleague PSI Shri Ghanshyam Ballad started physical attack on complainant Shri Sunil and when his waiter Shri Shriram Borokar attempted to intervene he too was assaulted and insulted by him and the other accompanying police constables. Specific case is sought to be made out by the complainant that he tried his best to convince PI Shri Giri, by calling his elder brother on his cell phone so as to convince him i.e. PI Giri and also inability to fulfil his demand for serving the food as well as demand for an amount of Rs.20,000/-, for a period of one year for running the hotel, but the attempts turned futile as PI Shri Giri was in no mood to listen and he and his team caught hold of complainant and his waiter Shri Shriram, pushed them in their jeep and took them in the police station, where also they abused and assaulted both of them. It is further alleged that complainant's brother rushed to the police station, made enquiry as to why his brother and employee was arrested and being tortured by the police, but was turned away by the police and the police booked offences u/s. 353, 332/34 IPC as well as u/s. 131 of the Bombay Police Act against complainant and his employee, which according to him was absolutely false and unfounded and was fabricated to escape from their own illegal action.

It is further submitted by the complainant that the unfortunate events which occurred at the premises were got recorded in CCTV camera and are the best evidence of the illegal action of the concerned police officials. On the basis of these allegations, complainant Shri Sunil has asserted violation of his human rights at the hands of the concerned police officers and officials and sought remedial reliefs from this Commission.

On the other hand the erring police officers have strongly controverted all the adverse allegations raised against them, by asserting that on the fateful night, complainant was found running his hotel beyond the schedule hours as he was supposed to close the hotel at 11.00 p.m. but was found attending and serving the customers till 11.55 p.m. and therefore PSI Shri Ballad made enquiry with him and started preparing a challan, which was resented by the complainant who infact spoke in an insulting and arrogant manner with him, challenged his authority, gave a fist blow on his mouth and even his employee Shriram joined him in this illegal act and thereby prevented the police team from discharging from official duty and therefore both of them were apprehended by using reasonable force and were taken to the police station and an FIR was registered against them under the relevant Penal Sections as referred above. In other words, the alleged erring police officers justified their action and infact put the complainant in the dock by accusing him of using criminal force on them and of causing obstruction in discharge of their official duties. On these grounds dismissal of the complaint is urged by them.

2. With these factual background before us, let us find out as to in whose favour the scale of justice gets tilted. I have already pointed out in the beginning of my order that scope of enquiry lies in a very limited sphere as from the various mitigating circumstances, it has to be seen and determine whether a case of violation of human rights has been made out or not. It would be appropriate to set out the basic legal principles of human rights and then refer to certain basic duties imposed on a police officer while discharging his official duty particularly while registering and investigating a crime against the accused.

Legal Principles:

The Doctrine of Human Rights has been highly influential within International Law, Global and Regional Institutions, Action of the State and Non-Governmental Organization form a basis of the policy worldwide. The main concept of human right suggest that “If the public discourse of peace time global society can be said to have a common moral language, it is that of Human Right.” Human Rights encompasses a wide variety of right viz. Right to a fair Trial; Enslavement; Free Speech; Right to Education; Right of Health; Right to proper and soothing medical care; Right to have pollution free environment; Right of Senior Citizens etc. In other words it can be said that every human being has a right to live with dignity, freedom and justice. Of late the definition has been enhanced to include Right to Good Governance by State, which infact flows from the spirit of preamble to our Indian Constitution.

Thus it can be seen that human rights are set out in the Universal Declaration of Human Rights of 1948 and codified and further spelled out in series of International Convention, laying down minimum standards to ensure human dignity, drawing on the values found in different religions and philosophies. The gist of all this exercise is reflected from the Preamble of Indian Constitution and embedded under Article 21 of our Constitution.

At the same time reference to Art. 22 of the Constitution is also necessary as it pertains to the provisions about protection against arrest and detention in certain cases. Article read as under:

- (1) No person who is arrested shall be detained in custody **without being informed, as soon as may be, of the grounds for such arrest nor shall be denied the right to consult, and to be defended by, a legal practitioner of his choice.***
- (2) Every person who is arrested and detained in custody **shall be produced** before the nearest magistrate within a period of twenty*

four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

Criminal Procedure Code is a procedural enactment and Sections 50, 50A, 51, 56 and 57 imposes duty on the police to take certain steps, precautions while arresting, detaining and searching an arrested person. Section 56 mandates that arrested person should be taken before the Magistrate after his arrest and should not be detained for more than 24 hours in all circumstances, particularly when he is arrested without a warrant.

3. Analysis of the documentary evidence on record:

Neither of the parties have tender any oral evidence in support of their rival contentions, gist of which is already narrated by me while highlighting on the factual background. Of course from complainant's side, it is his complaint only alongwith the hard copy of the CCTV footage while from the police side, besides the statement of the entire team, statement of one independent witness Shri Ajay Gajanan Panditkar has been recorded who is supposed to be an eye witness to the actual incident of that night.

In my humble opinion the most crucial and important piece of evidence is the recording of the events in the CCTV camera, which virtually brings out the truth before this Commission. At this juncture I would like to point out that the police have challenged the authenticity of this footage by only contending that the recording of the event of making challan and interrogating complainant has been deleted and only the part incriminating them has been saved and produced on record by complainant.

I have seen and examined the authenticity of the recording in the open Court by observing the entire events carefully and that too in presence of both parties. Pertinent to note that except a vocal objection as to its authenticity not a single word is whispered or no attempt has been made out to show it is a doctored document which doesn't not depict the correct picture of the fateful events. I must point out that the police was given sufficient and reasonable opportunity to check the authenticity and veracity by directing the complainant to hand over the copy to them and despite reasonable opportunity, no one from their side reverted to this Commission to justify their contention about the recording being doctored .

4. Events as observed from CCTV Footage (Hard Disk at Article 'A')

The footage starts with a family, being served with food by the waiters and one can also see them leaving the hotel and immediately at that time a police vehicle is seen entering the premises; police officers getting down from it and going to the counter; and interacting with the complainant who then come out of the counter and is seen talking on mobile and thereafter with the senior police officer Mr. Giri and after few minutes one can see Mr. Giri slapping and beating complainant and joined by his colleagues Mr. Ballad and 5-6 police constables. It further shows waiter Shriram attempting to intervene and of being manhandled by them and both of them being caught hold of by police and being led towards their vehicle and of being virtually forced to sit in the rear side of the vehicle and of being slapped by the police officers and their team. It is important to note that nowhere it is seen and observed that either complainant Shri Sunil or his employee Mr. Shriram creating any obstruction or attacking any of the police officers physically so as to upheld its assertion of being obstructed by them in discharge of their official duties. While observing

these events a pinpointed query was put before the police officer who was present before this Commission about authenticity of these events and he also conceded that the footage does reveal about the complainant and his employee being manhandled and beaten by the police team. The footage also indicates that there were about 4-5 persons other than the police persons, which included one lady also who is seen sitting on cot (admittedly, the hotel was also having a lodging facility), surprisingly except from recording statement of one Shri Ajay Panditkar, supposed to be an independent witness who had come to the inn for food, statement of other persons, as seen in the footage has not being recorded for the reasons best known to police agency. Even statement of this witness seems to be very cryptic as he says that the moment police took entry, one of the police officer came to him, asked his name and address and went away and he just saw an argument going on between complainant and the police officer. His statement nowhere supports the allegations of the police about complainant hitting PSI Ballard and of behaving in an arrogant manner with him or other police officer or of causing or creating any kind of obstruction in the performance of their duties. I don't want to express any opinion on the credibility of this statement as the case is still subjudice before the Competent Court but for our purpose for deciding the issue agitated before us, suffice to point out that his statement nowhere supports the theory attempted to put on record by the police.

With such strong authentic documentary recording of the event which clearly establishes that officers of the law enforcing agency did not act as expected from a responsible police officer and seems to have taken law into their own hands by going to the extent of physically hurting complainant and his employee . I am again repeating and emphasizing that credibility, authenticity of this vital documentary evidence has not at all being shattered or displaced by

the police agency. Registration of a criminal case against the complainant does not wipe out or dislodges his grievance about violation of his human rights which evidently stood violated at the hands of law protectors who seems to have merge into the role and character of law breaker. Instead of taking a legal and logical action in accordance with due process of law, they obviously acceded their jurisdiction, misused their powers and exhibited an absolutely unruly behaviour which is unbecoming of a responsible police officer.

5. In view of the foregoing discussion I have no hesitation to sustain the complainant's contention about his basic human rights, conferred on him and reiterated by our Constitution, of being seriously violated by the illegal action. I may point out that complainant as well as PSI Ballard were taken to the medical officer and their injury certificate are placed on record. Injury certificate of the complainant does indicate about having sustained two injuries (contusion) caused by hard and blunt object and injuries are on right and left cheek, while his employee Shriram appears to have sustained four injuries (one abrasion and three contusion) on his upper lip, neck and both cheeks caused by hard and blunt objects, while injury certificate of PSI Ballard seems to be doubtful as initially only one injury of the nature abrasion is shown on head which appears to have been scratch and is shown on lower lip and suppose to be caused by hard and rough object. If a fist is given on the face, why only a specific part gets injury, is a question to be asked to the medical officer and to that person and then to add to this confusion are the interpolation, which completely negatives the theory of the complainant being aggressive. A futile attempt has been made by the police to justify the injuries on the person of the complainant and his employee by submitting that it was caused due to the resistance by them

which constrained them to use reasonable force. But, this reasonableness itself becomes clear from their actions as seen in the CCTV footage.

6. Last but not the least is the relief which this Commission can grant since violation of human right has been established from the materials on record. Powers of this Commission are confined and restricted under the Act, as clear from provision of Section 18. Commission is a recommendatory body and at the same time has also power to award compensation. I am pained to point out that the police officers when found guilty of breach of such Constitutional Rights, then it makes the already difficult task of law enforcement even more difficult because the law enforcers steps into the shoe of law breaker, and the net result is not only assault on human dignity and the law itself, but also the creation of obstacles which prevent the progress of effective policing.

The facts and circumstances thus call for award of a reasonable compensation for the complainant as well as for his employee and also a direction to the superior authority to initiate appropriate disciplinary action against the errand police officers. With these observations following recommendation are made:

- a) **Addl. Chief Secretary in the Home Department, Mantralay Mumbai to pay an amount of Rs.1,00,000/- (Rupees One Lac Only) each to the complainant Shri Sunil Dnyandev Rayne and Shri Shriram Manohar Borokar as an interim compensation for violation of their human rights within six weeks from the date of receipt of this order. In default to pay an interest of 12.50% p.a. on the awarded amount till its actual realization.**
- b) **Director General of Police is directed to initiate necessary legal disciplinary action against the erring police officer PI Shri Giri, PSI Shri**

Ghanshyam Ballad, responsible for exceeding their jurisdiction and powers and for violating basic human rights of the victims as per rules.

- c) Compliance of these directions be made within six weeks and report be made to this Commission for further necessary action.**

The Ld. Secretary of this Commission to forward the copy of recommendation passed by this Commission to the concerned departments for information and action in accordance with the provisions of section 18(e) reproduced supra above. With these directions the case stands closed and disposed off.

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