



MAHARASHTRA STATE HUMAN RIGHTS COMMISSION

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MSHRC/MAS/ 10/2016/

Date: 06/10/2016

MAS/Case No.– 3913/2009-10

Name of the Complainant : Charan Govindaji Waghmare
 R/o. Kandri, Tal. Mohadi,
 Dist. Bhandara

V/s.

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

Date : **03rd October, 2016**

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

ORDER

Scrutinised the record. Facts necessary for proper and effective appreciation of the merits of the present complaint are as under.

Complainant Shri. Charan Sovindaji Waghmare in the year 2009 was member of Zilla Parishad and was actively involved in social work. Complainant alleges that on 14.11.2009 around 11.00 a.m. he went to Police station Mohadi to obtain copy of any FIR in respect of an offence of a rape of a minor girl and approached PI Anil Deshmukh in charge of the concerned Police Station but he was beaten, abused, insulted by him and was put in the lock up. Because of assault he sustained injuries on his back and had to be rushed to Primary Health Centre for treatment. It is his grievance that though he requested the Sr. Police Officer to make inquiry about the incident but no action was taken and therefore, he approached this Commission to seek redressal of his

grievance, which according to the complainant amounted to violation of human rights.

These allegations came to be denied in strong words by learned SP, Bhandara by his detailed response Exhibit 'A' dated 15.01.2010 and reiterated again by a additional response Exhibit 'B' dated 25.09.2016, contending interalia that on 14.11.2009, complainant came to the Police Station to make inquiry about crime No. 59/2009, for the offence u/s 468 and 428 IPC and then asked the Police Officer as to why and how he came to be booked for the offence u/s 135 of Bombay Police Act and entered in scuffle with the in charge PI Shri. Afshaq Sayyad abused and threatened him and therefore, in order to avoid the situation going out of control PI Sayyad arrested and put him in the lock up, took entry in the station diary and was also taken for medical checkup to Primary Health Centre where he and his supporters pressurised the Doctor to issue a certificate of having sustained injuries at the hands of the Police. An entry to that effect came to be taken in the Station diary and an inquiry was ordered, which came to be conducted by Dy Superintendent of Police Shri. Sudhir Hiremath. It is further contended that complainant has also approached High Court of Judicature at Bombay, Nagpur Bench, challenging the legality and propriety of alleged Police action under WP no. 629/2009.

As stated above complainant's grievances came to be denied in toto, urging for dismissal of the complaint.

Keeping in mind these rival contentions, I would now turn to highlight on the legal principles, settled norms governing and controlling operation of Protection of Human Rights Act.

Let us analyze the legal principles governing this concept which originates from Art. 21 of our Constitution:

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 in fact 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.

To conclude, human right to be more precise is a right to live with honour and dignity and this right gets the legal sanctity from

our Constitution, emanating from Art. 21 of our Constitution. These legal principles will have to be borne in mind while evaluating the merits of the present complaint.

At this stage I would like to first refer to the provisions contained in Art. 22 of our Constitution, which gives a basic fundamental right of protection against arrest and detention and reads as under:

22. Protection against arrest and detention in certain cases:

(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 he 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.”

Sub Clause 2 imposes a mandate on the police to produce an arrested and detained person before the nearest Magistrate within a period of 24 hrs of such arrest. The law makers in their wisdom have conveyed the importance and significance of these

provisions “**shall be produced**”. It would not be out of place to mention here that based on these principles, as content in Art. 22 of our Constitution, corresponding provisions came to be incorporated in the Cr. PC i.e. Sec. 50, imposing a duty on police officer to inform an arrested person, grounds of arrest and right to bail. Then Sec.50A, imposing an obligation on the person making arrest, to inform about the arrest to his friend, relative or such other person as may be nominated, Sec. 51 contains provisions regarding search of an arrested person while Sec.56 imposes a duty of taking the arrested person before Magistrate when such arrest is made without warrant and the most important provision is contained in Sec. 57 which provides that no police officer shall detain in custody a person arrested without warrant for a longer period and that is for not more than 24 hours unless an order is obtained or secured from a Magistrate. The law on this point has been aptly laid down by Supreme Court in the case of D. K. Basu V/s. West Bengal AIR 1997 SC 610, formulating 11 specific requirements and procedure that the police and other agencies have to follow for the arrest, detention, and interrogation of any person. These requirements are necessary to reproduce here:

“ i) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register

ii) That the police officer carrying out the arrest shall prepare a memo

of arrest at the time of arrest and such memo shall be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be counter signed by the arrestee and shall contain the time and date of arrest.

iii) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

iv) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

v) The person arrested must be made aware of his right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

vi) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

vii) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The 'Inspection Memo' must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

viii) The arrestee should be subjected to medical examination by the trained doctor every 48 hours during his detention in custody by a

doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory, Director, Health Services should prepare such a panel for all Tehsils and Districts as well.

ix) Copies of all the documents including the memo of arrest, referred to above, should be sent to the Magistrate for his record.

x) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

xi) A police control room should be provided at all district and State headquarters where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.”

Presently we are concerned with the question and of course very crucial and relevant question and that is whether a case of violation of human right has been made out by the complainant and if yes, the reliefs to which he would be entitled. While reflecting on the factual background I have pointed out that, complainant Shri. Charan, came with a case of violation of his human rights at the hands of PI Anil Deshmukh, of Mohadi Police Station who illegally detained him, and humiliated and physically abused him for no fault on his part. There are two material allegations by the complainant viz, of having being assaulted and detained by the Police. A further case has to be made by him that because of the assault on his back he suffered from spendulitis and in fact required to take treatment even now. The story of the

assault is not supported by any authenticated evidence as accept bare allegations, no other authentic material has been produced on record by the complainant. Surprising to note that though he alleges that he was taken to primary health centre and was admitted as an indoor patient and was administered saline except his version no authentic medical certificate or record is produced by him. Complainant submitted medical certificate of one Dr. Deshkar dated 22.12.2009 which neither discloses about any external injury on his back or any of the part of his body nor the subsequent certificate by the same Doctor dated 21.01.2016 substantiate his contention about having suffered spindulitis because of the assault and injuries on his back. These medical certificates are at Exhibit 'C' and 'C1'. Thus, no material has been placed on record to establish that complainant suffered or is suffering spindulitis because of the beatings by the Police and in particular on his back. This part of his grievance has to be discarded by the Commission.

Now coming to the second grievance of having being illegally detained in the lock up, it is pertinent to note that a very paradoxical stand came to be taken by the concerned Police. In its response Exhibit – 'A' and 'B' a specific contention has been raised that because of the unruly behaviour of the complainant with the Police Officers, in particular PI Sayyad it was left with no option but to put him in the lock up in order to ensure that he does not flee from the Police Station as well as prevention of commission of

serious offence. Presence of the complainant in the Police Station on the relevant day and time is not disputed. In fact extract of the station diary of 14.11.2009 is also filed at Exhibit 'D', which only mentions about the complainant having being taken to Primary Health Centre for medical examination in crime no., 25/2009 for the offence u/s 135 BP Act and his supporters pressurised Dr. Karandikar of Primary Health Centre to give us history of assault in the certificate and other two persons were also arrested in this crime and in the meanwhile Prabhat Shyam Sunder Mishra of Bhandara came to the Police Station and moved an bail application for releasing the arrested accused and accordingly complainant and other two accused came to be released on bail by taking bail bond from them.

From the gist of the contents in the station diary Exhibit – 'D' it can be seen that all these facts are missing from the response Exhibit – 'A', 'B', which discloses altogether a different occurrence of the events, discussed above. What is material and important to note the fact that the concerned Police in its response Exhibit 'B' dated 25.09.2016 fairly conceded about having taken the complainant in custody because of his unruly behaviour with in charge PI Mr. Sayyad, what pinches my mind is why a cognizable case of obstructing a public servant in discharge of his official duty, u/s 353 or 332 IPC was not registered against complainant and why due and proper procedure of arrest and detention was not followed as mandate under Article 22 of the Constitution and

reaffirmed in Sec. 50 onwards of Cr PC as discussed in the Para supra above.

Sec.135 of the Bombay Police Act comes into operation only when there is wilful disobedience of an order lawfully made u/s 37, 39 or 40 of the Act. Different punishment is described under sub clauses (i) to (iii).

Surprisingly, no authentic, reliable material has been placed on record by the Police as to the nature of alleged disobedience by the complainant and under which provisions the same to committed i.e. whether u/s. 37 or 39 or 40 of the Act.

The burden and onus was on the Police to substantiate their stand by placing credible, document on record and in their default, I am left with no other option but to hold that complainant's detention in the lock up was illegal, in contravention of the provisions of our Constitution and Cr PC, gist of which is already referred in the above paragraphs.

This action of the Police, is uncalled for and obviously makes out a case of illegal detention and consequently violation of human right of the complainant.

I would like to clarify at this junction that this Commission is dealing with the question of violation of human rights and therefore, pendency of the petition before the High Court, does not come in its way in proceeding with the present petition as well as dealing with the prayer made therein. Quashing of a prosecution on the ground of its illegality is a different question,

which can be adjudicated upon by a Court of competent jurisdiction while adjudication of violation of human rights lies very much within the powers and jurisdiction of this Commission.

Foregoing reasonings, leads to a final conclusion about violation of the human right of the complainant which warrants issuance of certain directions to the Home Department in Government, besides an award of interim compensation to the complainant which of course cannot said to be a substitute for the agony and the trauma felt and suffered by him and his family, but certainly can be a solace for their sufferings. **In the result the following recommendations are made:**

a) Additional Chief Secretary, Home Dept, is requested to initiate a disciplinary enquiry against PI Shri. Sayyad and Anil Deshmukh for illegal arrest and detention of the complainant by committing breach of mandatory provisions under Sec. 50, imposing a duty on police officer to inform an arrested person, grounds of arrest and right to bail. Then Sec.50A, imposing an obligation on the person making arrest, to inform about the arrest to his friend, relative or such other person as may be nominated, Sec. 51 contains provisions regarding search of an arrested person while Sec.56 imposes a duty of taking the arrested person before Magistrate when such arrest is made without warrant and the most important provision is contained in Sec. 57 which provides that no police officer shall detain in custody a person arrested

without warrant for a longer period and that is for not more than 24 hours unless an order is obtained or secured from a Magistrate. And of course provisions of Art. 22: Protection against arrest and detention in certain cases:(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 he 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.”

- b) Additional Chief Secretary, Home Dept, requested to pay compensation of Rs.1 lac (Rupees One Lac Only) within 6 weeks from the receipt of this order. In default to pay an interest of 12.50% p.a. on the awarded amount till its actual realization.
- 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**