



MAHARASHTRA STATE HUMAN RIGHTS COMMISSION, MUMBAI

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06.07.11

* Case No. CPN /4932/2009-10. | 1409

Name of the complainant : Shrivallabh Karwa,
640, Mangalwar Peth, Solapur.

Vs.

The Commissioner of police,
Solapur.

Date : 30.06.2011.

Coram : Justice Kshitij R Vyas (Former Chief Justice), Chairperson

ORDER

Complainant as well as respondent Shri Chandrakant S Mali, PSI from Solapur (City) police station are present at the time of hearing.

The complainant has filed this complaint against police personals named in the complaint, alleging that the police personals of Jail Road Police Station, Solapur city on 01.04.09 entered the premises of the complainant and illegally seized his documents and illegally detained the complainant in the Jail Road Police Station. It is the grievance of the complainant that even though the offences were non cognizable, he was illegally arrested on the basis of the complaint lodged by one Ram Mahetre under Money Landing Act. It is also the grievance of the complainant that even though he has repeatedly requested the police Commissioner, Solapur to look into the allegations of illegal arrest, illegal search and illegal seizure of documents, nothing has been done in the matter. The complainant

has therefore filed this complaint for appropriate action and enquiry against the concern police personals named in the complaint.

DCP, Crime, Solapur has filed the reply in the case. While denying the allegations, it has been pointed out that an offence has been registered vide CR No 3030/09 U/S. 32(2), 32(B), 33(1)(A)(C) of Bombay Money Lending Act against the complainant. Shri Chandrakant Mali, PSI has stated that charge sheet is already filed against the complainant and the matter is subjudiced.

Today at the time of hearing complainant Shri Karwa has invited my attention at the judgment delivered by Hon'ble Bombay High Court, Nagpur Bench in the case of Ashok L Gote v/s state of Maharashtra, 2007 All MR (Cri) 2389. Hon'ble High Court in this judgment has held that only Section 34 and Section 33 of the Bombay Money Lenders Act are cognizable. It is specifically held that offence U/S 32-B is non cognizable. Police therefore could not have taken cognizance U/S 32(B) and could not have registered an offence. In view of this Hon'ble High Court has quashed crime registered at police station and criminal proceeding instituted on the basis of FIR.

In the present case also the police have registered offence U/S. 32(B) against the complainant which is non cognizable. Under the circumstances police could not have detained or arrested and sought remand of the complainant, as has been done in this case. It appears police has taken special interest to book complaint without justifiable

reason. The police personals are expected to know the law laid by the highest court of the state which cannot be overlooked, as done in the present case.

As the action has been taken against the complainant contrary to the decision of High Court, some action is required to be taken against the concerned officer involved in the matter of illegal entry, search, detention and arrest of the complainant. The Commission therefore by recommendatory directions direct the Commissioner of Solapur to take appropriate action against the concerned officer by way of Departmental Inquiry after, the decision of the pending criminal proceeding against the complainant in the court. It is clarified that action against the concerned officer shall be taken subject to the decision in the criminal prosecution. It is further clarified that if the prosecution results in the acquittal of the complainant only, then action shall be initiated.

With this recommendatory directions the case is ordered to be closed.

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**(Justice Kshitij R. Vyas)
Chairperson.**

Mumbai.

