

MAHARASHTRA STATE HUMAN RIGHTS COMMISSION

Administrative Staff College Compound, 9, Hazarimal Somani Marg, Opp. C.S.T.(VT), Mumbai- 400 001.

Telephone Number : 2207 3434 Fax : 2207 3434

Website : <http://mshrc.maharashtra.gov.in>

SHRC/VGM/08 /2009/ 2254
Date : 12 August 2009

Case No. – 1606/2003

Name of the Complainant : Vijay Marotrao Pawar
Mehekar, Tal. Mehekar,
Dist. Buldhana

Vs.

The Superintendent of Police
Buldhana

Date : 24 July 2009

Coram : **Justice V G Munshi, Member**

ORDER

Read the allegations made in the complaint and report received from the Spl Inspector General of Police, Amravati Division, Amravati and report submitted by the Investigation Wing of the Commission.

2. The important facts of the case of the complainant may be briefly stated as under.

Complainant is resident of Mehekar, Dist Buldhana and during relevant time he worked as a District Head of Vishwa Hindu Parishad, Buldhana. That on 09.08.2003 he had gone in Village Aamkhed to attend some function of the party. He returned to Mehekar along with party workers at about 10.45 p.m. in the night. He came to know that some communal riot taken place at Mehekar. He immediately went in Police Station



Mehekar and met Police Inspector Daberao. It was alleged that PI Daberao did not give him any information about the riot and on the other hand abused him and driven him out of the Police Station. The complainant returned home.

That on 10.08.2003 early in the morning PI Daberao went to the house of the complainant along with Police Constables. They dragged the complainant out of the house, insulted him and beaten him by sticks. He was forcibly kept in police van and he was taken to the Police Station. He was again beaten in Police Station. Though the complainant did sustain severe injuries, he was not referred to the Medical Officer for treatment till 2.00 p.m. in the noon. Thereafter, he was sent for medical examination and treatment, from Rural Hospital, Mehekar to Civil Hospital, Buldhana. It was alleged by the complainant that during this period, he was not produced before Magistrate. In the last he was released on bail on 01.09.2003.

The complainant on 16.08.2003 made complaint in Police Station Mehekar and to Superintendent of Police Buldhana. According to him the Police did not take any action and therefore, he was required to approach the Commission. It was alleged by the complainant **firstly**, the Respondent illegally arrested him and falsely implicated him in criminal case. **Secondly**, he was beaten and ill treated by the Police. **Thirdly**, he was not produced before the Magistrate. Thus, according to the complainant the Respondent Police by their conduct and behavior violated the human rights of the complainant. He claimed action against all these persons.

3. The Respondent Special Inspector General of Police, Amravati by filing their report denied and disputed all the allegations made in the complaint. **Firstly**, according to the Respondent, the complainant taken active part of the commission of communal riot and therefore, offence was registered against him in Police Station Mehekar. **Secondly**, the complainant was found in a public place, during the period of curfew and therefore, offence was registered against him. **Lastly**, according to the Respondent, they have taken proper action in this matter and calls for



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no adverse remarks. They denied that the Police beaten and ill treated the complainant. In the last according to the Respondent, present complaint was made to the Commission, with malafide intention and motive, and to obstruct the Police from making further investigations in this crime.

4. Therefore, it is necessary to view the case of the complainant in the light of facts and circumstances brought on record.

(i) That on 09.08.2003 communal riot taken place in Mehekar town. Police Inspector P K Daberao and Police staff were busy in bandobast duty and they moved in riot affected area. The members of unlawful assembly threw stones on Police vehicles and injured number of Police Officers, Officials, set the public and private property on fire and damaged it. Despite of warning, the members of the assembly did not disperse and ^{riot} continued. Therefore, Police were required to use tear gas. Even then, the violence continued ~~riot~~. In the last, in order to control the violent mob Police opened fire from guns, in obedience to the orders given by Sub-Divisional Magistrate and controlled the situation. Later on Police arrested number of persons, criminal cases were registered against them and after completing investigation charge sheets were filed in the Court. On this background we have to view this case.

(ii) The complainant made following grievances in this matter.

- (a) That on 10.08.2003 in the morning Police came to his house, dragged him out of house, insulted and beaten him by kicks fists and sticks. He was again beaten in Police Station.
- (b) Though he did sustain severe injuries, he was not immediately taken to Hospital for treatment.
- (c) He was not produced before Magistrate, though he was arrested in these crimes.
- (d) He was falsely implicated in criminal cases.



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Now let us proceed further, to see, whether the acts and circumstances brought on record, substantiate the case of the complainant.

(iii) According to the complainant that on 10.08.2003 in morning Police came to his house and beaten him. They again beaten him in Police Station. The Respondent denied and disputed the same. The Report mentions that the complainant Vijay Pawar, Patte Mastar, Taktode and other persons were the members of unlawful assembly. The members of the assembly tried to set shops of Abdul Sattar and Dadabhai Thekeya on fire. Therefore, Police did lathi charge on the members of the mob. The Report clearly mentions that complainant Vijay Pawar and other persons got injuries in this lathi charge. The Police tried to apprehend complainant Vijay Pawar and other person. According to the Respondent, Vijay Pawar and other persons pelted stones upon Police Staff and ran away from that place. Now one thing has become clear that Vijay Pawar did sustain injuries in the riot and that too at the hands of the Police.

(iv) The Respondent mentions that in order to control the situation, curfew order were issued by Special District Magistrate on 09.08.2003 and it came into force immediately. The Report of Investigation Wing mentions that the complainant and other persons were found moving in the town on 10.08.2003 during early morning hours and when the prohibitory (curfew) order was in force. Therefore, Police arrested the complainant for having committed offence under Sec. 188 of IPC and offence at Cr. No. 3040/2003 was registered in Police Station. The Report further mentions that even preventive action under Sec. 110 Cr PC was taken against the complainant. The Report shows that statement of witness Jugraj Januji Patthe was recorded. He never said that Police beaten complainant in his house or in Police Station. He added



that when Police brought him near the van and when he saw complainant Vijay Pawar and other persons, they were already sitting in the Police van. In such circumstances, it is very difficult to accept that case of the complainant that, he was taken from his house etc. The Report shows that, injuries found on the person of the complainant were simple and it were caused to him during riot.

(v) The report filed by the Respondent mentions that on the basis of complaint filed by Shaikh Salim Shaikh Ghulam and Mohd Qureshi offence at Cr No. 122/2003 was registered against complainant and other persons in Police Station Mehkar under Sec. 385, 430, 143, 144, 147, 148, 149, 332, 353 and 427 of IPC and Sec. 135 of Bombay Police Act on 10.08.2003. The complainant, while he was admitted in the Hospital, he moved for grant of anticipatory bail and got bail and he was discharged from hospital on 29.08.2003. Record shows that he was given proper medical treatment.

(vi) It is necessary to report that the offence at Cr.No. 3040/2003 u/s 188 of IPC was registered against the complainant. In order to confirm whether complainant was arrested in that crime, this matter was referred to the Investigation Wing of the Commission. The team visited Police Station, Mehkar and inspected arrest register, lock-up register, station diary, crime register. The Report of the Investigation Wing mentions that, complainant was arrested in this crime and such entries were taken in all the registers. Even entry was taken in the register, that he was referred to the hospital for examination and treatment. Now there is no scope for doubt that the complainant was arrested in Cr. No. 3040/2003 on 10.08.2003.

(vii) It was the grievance made by the complainant that thereafter he was never produced before Magistrate. The



Respondent also nowhere stated anything about the production of the complainant before Magistrate. Therefore, it is to be accepted that complainant was never produced before Magistrate in Cr. No. 3040/2003. Provisions of Chapter V of Code of Criminal Procedure deal with the subject "Arrest of persons". The person arrested must be produced before Magistrate within 24 hours of his arrest in view of Sec. 57 of Cr PC and it is reproduced as under

Sec. 57 Cr PC

"Person arrested not to be detained more than twenty-four hours

No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court."

It was incumbent upon the Police Officer to act strictly in accordance with the provisions of Chapter V of the Cr PC and more particularly, Sec. 57 of Cr PC and the guidelines given by the Apex Court in the case of D K Basu Vs. State of West Bengal (A I R 1997 SC 610). From the record it does not appear that the Police Officer, did act strictly in accordance with mandatory provisions of law.

In view of this situation and legal position I make following recommendations.

- (A) **Superintendent of Police, Buldhana either himself or through Senior Police Officer, make inquiry, as to why complainant (Cr.No. 3040/2003) was not produced before Magistrate, within 24 hours of his arrest and to take action according to law.**



- (B) Copy of this order be sent to Superintendent of Police, Buldhana through Secretary - Maharashtra State Human Rights Commission, Mumbai for information and necessary action.
- (C) Compliance be reported.

Therefore, Case No. 1606/2003 is disposed of accordingly with these observations and recommendations.



V. G. Munshi

(Justice V G Munshi)
Member, SHRC

Copy of this order be sent to Superintendent of Police, Buldhana through Secretary - Maharashtra State Human Rights Commission, Mumbai for information and necessary action.