



MAHARASHTRA STATE HUMAN RIGHTS COMMISSION

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SHRC/VGM/6/2011/1290

Date: 28/6/2011

Case No. – 5949/2008-09

Name of the complainant : Paresh Bavisi
1/C, Shanti Jutir, Tulij Road,
Nallasopara (E)
Dist. Thane.

Vs.

The Superintendent of Police
Thane (Rural)

Date : 21 June 2011

Coram : Justice V G Munshi, Member

ORDER

Read the averments made in the complaint and report received from the Respondent Superintendent of Police, Thane (Rural). Read the case papers. Heard the parties.

2. The complainant is resident of the given address. That on 27.12.2008 the complainant was present in his shop along with his mother and son. It is the case of the complainant that Police Officer Khandale and four Police Constables came in his shop and forced him to accompany them to the Police Station. The complainant made following allegations against Police.

- (i) **Firstly**, when complainant refused to accompany Police to Police Station, Police Officer Khandale put his hand on revolver and threaten him to kill with life.
- (ii) **Secondly**, Police Officer Khandale called Police Inspector in the shop and they all started beating complainant, his mother, brother and son and also uncle.
- (iii) **Thirdly**, they forcibly taken the complainant and his brother in Police jeep to the Police Station.
- (iv) **Fourthly**, Police taken signatures of complainant on register and blank paper and released the complainant and his brother on bail.
- (v) **Fifthly**, after half an hour the Police went on the spot and taken signatures of the uncle of the complainant on blank papers.

The complainant therefore, moved the Commission for necessary action against Police.

3. The Respondent Superintendent of Police, Thane (Rural) by filing their report denied and disputed all the allegations made against them in the complaint. It is the case of the Respondent that on 26.12.2008 at about 1300 hours near Nallasopara Patankar Park, the complainant obstructed the traffic Police from discharging their duties and therefore, offence at crime No.501/2008 under sections 353, 294, 504 of IPC was registered against him in Police Station, Nallasopara. That on 27.12.2008 Police had gone in the office of the complainant to arrest him. It was alleged by the Police that the complainant obstructed and tried to avoid his arrest. Police arrested him after using force. Brother and uncle of complainant strongly opposed the said arrest and committed breach of public peace. Therefore, offence (No. 599/2008 and 600/2008) u/s. 110 r/w. Sec.117 of B.P. Act was registered against them. According to the Police they have taken proper action in this matter according to law. In the last according to the Police, present complaint was made with malafide intention and motive and to pressurize the Police.

4. The record shows that, on the basis of complaint / FIR dated 26.12.2008 lodged by Police Constable Pramod Shere in Police Station Nallasopara, offence at Cr. No. 501/2008, under section 353, 294, 504 of IPC was registered against the complainant. Therefore, on the next date that is on 27.12.2008 Police had gone to the office of complainant to arrest him. Accordingly, Police arrested the complainant and taken him to Police Station. All these facts are not in dispute.

5. Now the next question arises in this case is whether the arrest of the complainant was legal and all the formalities were properly complied with. The Respondent has come with a case that as per the guidelines given by Apex Court in this regard, they properly explained the complainant, the ground of arrest etc. Naturally, the burden affirmatively lies upon the Respondent Police to establish the same. Now let us proceed further to view the case of the complainant on this background.

- (i) The record shows that the complainant is a social worker and person of dignity. It must be borne in the mind that the dignity of the person to be arrested must be protected. The complainant in the complaint mentioned that this event of arrest was witnessed by number of persons and they all put their signatures on the complaint. Thus, the said arrest unnecessarily became public display.
- (ii) We know that arrest cannot be justified only because Police have power to arrest person without a warrant in a cognizable case. The question arises in this case is whether arrest in present case was justified. **Firstly**, the offence alleged to have been committed was no so grave like murder, dacoity etc. **Secondly**, the person arrested was not a habitual offender. **Thirdly**, there was not any possibility of destroying evidence or interfering with witness or investigation. **Fourthly**, there was not any possibility of escaping of the person to be arrested. **Lastly**, it being not a heinous offence, an arrest could be avoided and Police could issue notice to the person to attend Police station etc. It is nowhere explained or it is not known why such proper course was not adopted by Police and why Police directly went to the shop of complainant to arrest him. •

- (iii) Sec. 50 of the Code of Criminal Procedure 1973 requires a Police Officer arresting any person to

"forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest."

Where the arrest is without warrant, the person to be arrested, must be informed the grounds of arrest. These grounds must be recorded in Police record. The right of the person to be arrested to consult Advocate etc cannot be denied. In other words, all these things must be explained to the person to be arrested. For that purpose the Police have to prepare arrest panchnama in presence of two witnesses. The panchnama should specifically mention all these things. From the report it does not appear that any such panchnama was drawn nor it was produced on record. For want of such document how it can be believed and accepted that all these things were explained to the complainant. The law requires that the person arrested should be shown the written reasons as well and also its copy is to be given to that person on demand. No such formality was completed. The law has established certain just procedure and it must be followed. In the present case it is seen that no such procedure was followed.

- (iv) It was alleged by the complainant that he was beaten and forcibly taken to Police Station in Police jeep. As soon as person is arrested the Police should make mention of existence or non-existence of injury on his person in arrest panchnama and also in register of arrest. The Respondent did not produce any document to substantiate their case of compliance.
- (v) The law requires that such arrest and place of detention should be communicated by Police to Police Control room etc. Nowhere it is mentioned that such formality was complied with.

It is necessary to mention that the Commission, is receiving large number of complaints of violation of human rights, about abuse of powers and about arrest, detention etc. Therefore, now it has become necessary to view such violations seriously

Arrest without following due procedure and guidelines amounts to deprivation of liberty of an individual.

Therefore, it has become necessary to make following recommendation in this case.

(A) Superintendent of Police, Than (Rural) to make inquiry into the allegations made by the complainant in the complaint in the light of observations made in this order and to take action if any according to law.

(B) Superintendent of Police, Thane (Rural) to take and complete the inquiry as early as possible and the compliance may be reported accordingly.

(C) Copy of this order be sent to Superintendent of Police, Thane (Rural) through Secretary – State Human Rights Commission, Mumbai for information and necessary order.

With these observations and recommendations Case no. 5949/2008-09 is disposed of accordingly.

The Secretary to communicate this order to the parties concerned.



Sd/-
✓ (Justice V G Munshi)
Member, SHRC