

MAHARASHTRA STATE HUMAN RIGHTS COMMISSION

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SHRC/VGM/02/2009/ 828

Case No. - 61/14/2006-07

Name of the Complainant : Sukumar Appaji Narendarkar
Azad Nagar, At Post Kabnur,
Tal Hatkanagale, Dist Kolhapur

Vs.

The Superintendent of Police
Kolhapur

Date : 25 February 2009

Coram : Justice V G Munshi, Member

ORDER

Read the allegations made in the complaint and report received from the Superintendent of Police, Kolhapur. Read the case papers.

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

Complainants Asha and Manisha during relevant time resided along with their parents at Ichalkaranji. These two girls were working as maid servants in the house of Hari Shankarlal Somani. Hari Somani is a business man and runs cloth shop in the market. That on 18.04.2006 Hari Somani along with his wife and children went to Panhala. The keys of the house were given to maid servants Asha and Manisha. On the same day during noon time, nouse breaking and theft taken place in the house of Hari Somani. The



neighbours informed Hari Somani about the theft and house breaking. After some time Hari Somani returned to his house along with his family members and he found that ornaments, cash etc of worth Rs. 4,12,000/- were stolen from his house. On the basis of the complaint filed by him in police station Shivaji Nagar offence at crime no. 36/2006 u/s 454, 380 of IPC was registered against these two sisters Asha and Manisha and their mother Kamal, on the basis of doubts shown by the house owner Hari Somani.

3. The Police from Police Station Shivaji Nagar on 19.04.2006 at about 8.15 hours arrested Asha and Manisha for the offence of house breaking theft etc. They were produced before the Magistrate and they were remanded in Police Custody. Later on they were released on personal bond. When the Police could not find sufficient evidences against the complainants of having committed an offence of house breaking and theft, the Police moved application for discharge u/s 169 on 25.08.2006 in the Court of JMFC, Ichalkaranji. The Court allowed that application on 28.08.2006 and discharged these accused persons.

4. The complainants moved present complaint through All India Human Rights Citizen Option for necessary action in this matter. According to them, **firstly**, the police falsely implicated them in this case. **Secondly**, they were illegally detained in police station. **Thirdly**, they were beaten and harassed in police station. Therefore, the complainant prayed for direction for the Departmental Inquiry of the Police Inspector and other police officers for illegal arrest and detention etc.

5. The Respondent Superintendent of Police, Kolhapur by filing their report denied and disputed the allegations made in the complaint. According to them the complainants were



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arrested in this crime only because the owner of the house showed doubt of these persons of having committed an offence of house breaking and theft. **Secondly**, the accused persons in custody voluntarily made a statement and agreed to discover the stolen ornaments etc. In the last according to the Respondent they have not falsely implicated these persons in a criminal case and they followed proper procedure which is required to be followed at the time of arrest of such persons.

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

(i) May it be noted that the facts mentioned here-in-after are not dispute by the other side or may safely taken as proved by the material on record.

(a) During relevant time complainants Asha and Manisha were working as maid servants at the house of businessman Hari Somani.

(b) That on 18.04.2006 owner of the house along with his family members went to Phanala and keys of the house were kept with these maid servants.

(c) The house breaking and theft of ornaments etc taken place in the said house on the same day in the afternoon.

(d) On the basis of report given in police station Shivaji nagar offence at Cr. No. 36/2006 under Sec. 454, 380 of IPC was registered against Asha, Manisha and their mother Kamai.

(e) That on 19.04.2006 at 8.15 house Police arrested them, produced them before Magistrate, they were



remanded in Police custody till 24.04.2006 and later on they were released on their executing personal bonds on 24.06.2006.

(f) That on 22.06.2006 Crime Branch, Kolhapur arrested one Raju Nagargoje for having stolen ornaments etc of worth Rs. 8,18,688 and he was arrested in this crime.

(g) That on 25.08.2006 Respondent Police moved application for discharge of these persons in Cr. No. 36/2006 under Sec. 169 Cr FC and the Court on 28.08.2006 allowed the said application and discharged the accused.

Now let us proceed with this admitted position.

(ii) It was alleged by the complainants that the Police beat and ill treated them after arrest. It was alleged that even proper procedure was not followed at the time of effecting their arrest. The Report shows that after arrest all these persons were examined by the Medical Officer. The accused were produced before Magistrate on two occasions i.e. on 19.04.2006 and 24.04.2006 for remand. Though the Magistrate made inquiry from them about ill treatment etc they did not make any complaint of ill treatment. Even no such complaint of ill treatment was made to any Authority till the filing of present complaint before Commission on 24.08.2006. Had it been the fact that they were given ill treatment, beating etc in custody, they would have definitely made such complaint at least before Magistrate. Omission to make such complaint before Magistrate indicates that no such things ever



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occurred and the case of the complainant cannot be accepted. **Secondly**, the complaint of ill treatment was made only after their discharge from the said crime No. 36/2006 that on 28.08.2006. In such circumstances it is very unsafe to believe the case of ill treatment etc. Moreover, the Respondent denied all the allegations of ill treatment etc. Therefore, the complaints were called upon before Commission for their personal hearing or in order to substantiate their case. In such circumstances it is very difficult to record any findings about ill treatment etc.

(iii) Admittedly, the complainants were arrested by Police on 19.04.2006 and they were discharged on 28.08.2006, on the ground that during investigation it was transpired that, these persons did not commit the offence as alleged. Thus, these accused persons remain in police custody for five days, though there was no evidence against them. According to them it was brought to the notice of the Respondent that they did not at all commit any offence nor they were connected with the commission of the offence and even then they were not discharged from the said crime. According to the complainants the fact that they did not commit an offence as alleged has further become clear from the subsequent event of the arrest of real accused Raju Nagargoje on 22.06.2006 and when stolen articles were seized and recovered from him. Even thereafter Respondents took two months to move the application u/s. 169/ Cr PC for discharge. In other words there was delay in moving the application u/s 169 Cr PC. Had it been the fact that there was no evidence



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against these persons, of having committed any offence, it was incumbent upon the Respondent to move such application at early date. It is not explained why such application was not moved earlier.

(iv) It was alleged that, these persons were falsely implicated in this case. From the Report it is seen that all these accused persons were arrested only because, the complainant (House owner and his wife) shown doubt of these maid servants. As the keys of the house were with these complainants and as the house breaking and theft taken place, while they were in custody of the house properly, naturally the house owner and his wife got doubt of these maid servants. In such circumstances it cannot be said that police unnecessarily arrested them. According to the complainant the prosecution was malicious. In that case these complainants can very well sue the house owner, his wife for damages / compensation for malicious prosecution.

(v) News appeared in News papers about arrest, detention of the accused persons. All these accused persons were discharged u/s 169 Cr PC and it presupposes that there was no case against them which could stand at trial. It was incumbent upon Police to move application for discharge at early date and that too within reasonable time, from the date of knowledge. **Secondly**, it is necessary to Impress upon the mind of the Respondent, proper care must be taken and it must be seen that no such unpleasant incident is repeated in future. I therefore, feel it necessary to make following recommendations to



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the Respondent in view of provisions of Sec. 18 of the Protection of Human Rights Act, 1993.

- (1) To appoint a Senior Police Officer to find out whether really there was delay in moving the application for discharge u/s 169 Cr PC and if so what are the reasons for the same.
- (2) To ascertain whether any action can be taken against the original complainant and if so, to take action according to law.
- (3) Copy of this order be sent to Superintendent of Police, Kolhapur for information and necessary action and compliance be reported.
- (4) The copy of this order be sent through Secretary - Maharashtra State Human Rights Commission, Mumbai.

With these recommendations the case No. 61/14/2006-07 is disposed of accordingly.

Dated : 25 February 2009



V. G. Munshi

(Justice V G Munshi)
Member, SHRC