



MAHARASHTRA STATE HUMAN RIGHTS COMMISSION

9, Hajarimal Somani Marg, Opp. Chhatrapati Shivaji Maharaj Terminus, Mumbai - 400 001

Tel: 22092857 Email:- court2-mshrc@mah.gov.in

MSHRC/MAS/6/2023/ 617

Date: 9/6/2023

To,

Hon.

1) Additional Chief Secretary
Home Department,
Mantralaya, Mumbai

2) Director General of Police
State of Maharashtra
Mumbai

3) Spl. Inspector General of Police,
Nagpur Division,
Nagpur

Sub: Case No. 2529/13/17/2020 dated 30th May, 2023

I am directed to intimate to you to comply with the orders / directions of the Commission.

You are requested to comply with the orders within one month or as specified in the order. The compliance report be kindly submitted to this office as per Section 18 (e) of the Protection of Human Rights Act, 1993 r/w. Regulation 22 to 24 of the Maharashtra State Human Rights Commission (Procedure) Regulations, 2011

Encl: 1) Order copy (10 pages)

(Shri D. B. Gawde IAS)
Secretary
MSHRC, Mumbai



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SHRC/MAS/6/2023/617

Date: 9/6/2023

MAS/Case No. - 2529/13/17/2020

Name of the Complainant : Ankita Shah Makheja
Nilesh Makheja

V/s.

Name of Respondent : Commissioner of Police,
Nagpur

Dy. Commissioner of Police
Zone III, Nagpur

Shri Navnath Hiware - PI
Shri Bhavesh Kaware - PSI
Smt. Madhuri Khobragade - WPC
Smt. Chetna Bisen - WPC

Order Date : 30th May, 2023

Coram : M. A. Sayeed, Member

ORDER

After having bestowed my anxious consideration on the merits of the rival contentions and the legal principles of human rights, the only issue which merits my consideration is whether a case justifying intervention by the Commission u/s. 12 & 18 of the Protection of Human Rights Act, 1993 is made out by the complainants or not?

2. For an effective and complete adjudication of this crucial issue, I would like to throw reflection on the factual background which

unfortunately unfolds usual case of apathy, misuse of power by none other than the officers of law enforcing agency and what is more shocking and pinching to note is the fact that victim happens to be a member of legal fraternity, practicing in Nagpur.

3. The ordeal started with a small incident of pelting of stones to stray dog by the victim's neighbor on the night of 25.03.2020. The complainant as a law abiding citizen and being an Advocate approached Lakadganj Police Station for registering their report about the incident in question, and instead of registering her report, she and her husband (co-complainant) were subjected to undergo trauma of illegal detention, physical and mental torture and harassment, which came to be recorded initially by complainant and then by her husband which resulted in more aggravated action of snatching away of their cell phones and being physically abused by the lady police constables as well as the other male police officials.

It is in this peculiar backdrop that complainant Adv. Ankita Shah and her husband Shri Nilesh Makheja moved this Commission u/s. 12 of the Act of 1993.

3. Ld. Commissioner of Police Shri Amitesh Kumar, Nagpur submitted detail report dated 24.10.2020, marked Ex. 'B', and very candidly admitted the occurrence of the incident in question as reflected from perusal of paragraphs 3 to 5 of the report. It is significant to note that disciplinary action under the Departmental Rules came to be taken against the erring police officers and officials

by imposing monetary penalty and censure, as well as transferring them from the concerned police station.

4. The Commission by way of abundant caution, directed the Spl. IGP, Investigation Wing attached with the Commission to conduct independent discreet enquiry and accordingly submitted detail report Ex. 'E', on 25.01.2021. Perusal of this enquiry report also reveals that occurrence of the incident is admitted and a bold opinion is given that the complainant and her husband were subjected to assault by the police officials/officers, causing voluntary hurt to them.

5. With such strong adverse reports on record, the Commission vide order 22.01.2021, issued show cause notices to the erring police officer/officials u/s. 16 of the Act of 1993, seeking their explanations. Accordingly, explanations vide Ex. 'F', 'K' came to be submitted. (Collective Exhibit is given to these explanations). I have gone through these explanations carefully, in which, elaborate details about the complainant's antecedents etc are set out. At the same time it is asserted that all of them have faced departmental action and the punishment is also imposed on them which infact is the blot on their unblemished service record and therefore, question of intervention by the Commission does not arise. It is asserted that they cannot be punished twice for the same act/default and therefore the complaint as such should be discarded at the threshold. In other words an attempt is made to take shield under the umbrella of Sec. 300 Cr. PC which speaks of "Rule of Double Jeopardy". I would be discussing on this aspect in further course of discussion/reasoning.

6. I have heard the complainants as well as their Ld. Adv. Sidiqqi at length and also the concerned police officers, PI Shri Hiware and PSI Shri Kaware. The Commission has been also taken through the video recordings of the incident in question, which has been seen in presence of the parties in open court hall and also the photo album depicting the events of the alleged incident in question.

7. Before I dwell into the merits of the rival contentions, I would like to point out that the complainants had also invoked the Criminal Writ Jurisdiction of High Court of Jurisdiction at Bombay, Bench at Nagpur by filing Cr. WP No. 751/2021 seeking registration of FIR against the erring police team of the concerned police station under relevant penal sections under IPC. However, the said petition came to be withdrawn by the complainants, as reflected from the copy of the order dated 13.04.2023 passed by the Division Bench, granting permission for withdrawal and of disposing off the petition since withdrawn. (Print out of the order is at Annexure 'A')

8. First of all I would like to deal with the legal issue raised by the respondent officers as regards the very maintainability of the present complaint on the ground of "Double Jeopardy". The question therefore is whether the departmental action would bar the prosecution of the present complaint? The law on the issue has been examined and deliberated by the Supreme Court, High Courts in number of decisions/pronouncements and it has been concluded that the only condition precedent for application of principle of "Double

Jeopardy" is that the person concerned has been prosecuted and punished for the same offence. No other ingredient can be added. It is further made clear that unless a person is not convicted or acquitted earlier for an offence based on the same facts, the question of Doctrine of "Double Jeopardy", contained in Article 20(2) or even u/s. 300 Cr. PC would not come into picture. Reliance with advantage is placed on a decision of re-Imran Khan Sardar Khan, 2012 Cr. LJ 1367. The law on the subject is settled by Supreme Court in re- Mohammad Yusufmia, **laying down distinct principle of Law that the purpose of departmental enquiry and of prosecution are two different and distinct aspects. The Criminal prosecution is launched for an offence in violation of a duty, the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty while the departmental enquiry is to maintain discipline in the service and efficiency of public service.**

This principle of law is reiterated by Supreme Court in number of decisions, viz re- State Bank of India, CDJ 2016 SC 826, re- K. Dubey (1988) 4 SCC 319, re- Rubina Banu, SCC online CHH 1276, re- G M Tank (2006) 5 SCC 446, re- D. R. Babu, SCC online AP 855.

9. Having settled the controversy as regards the applicability of Doctrine of "Double Jeopardy", the main ground of attack on the maintainability of the complaint before the Commission deserves to be discarded as not legally tenable.

Now comes the question as regards the justifications sought to be placed in collective explanations Ex. 'F' & Ex. 'K' by the erring police officers/officials. I don't think we need to exert more on this aspect as with the adverse findings by the supervisory authority, and substantiated by the Spl. IGP report Ex. 'E' referred above, there is no legal impediment in holding that the dignity and honour of the complainants were breached by the police action. Rather a gray area which has not been explained by Ld. Commissioner of Police Shri Amitesh Kumar, is as to what prevented him from initiating criminal action under the relevant penal section of IPC against the erring police officers and officials when his enquiry report Ex. 'B' very conclusively gave a finding about their alleged misconduct/actions for which penalty in the form of imposition of fine was imposed on them. It can be safely inferred that it is this non action on his part that constraint the complainants to seek justice from this Commission.

10. With the event of the incidents established on record, proving the foundation of the complaint of being detained, harassed, insulted, physically abused, I would like to elaborate on the meaning and interpretation of the word 'Harass', in Law Lexicon 2nd Edition, edited by Shri P. Ramnatha Iyer.

"Harass.—'Injure' and 'injury' are words having numerous and comprehensive popular meanings, as well as having a legal import. A line may be drawn between these words and the word 'harass', excluding the latter from being comprehended within the word 'injure' or 'injury'. The synonyms of 'harass' are: to weary, tire, perplex, distress tease, vex, molest, trouble, disturb. They all have relation to mental annoyance, and a

troubling of the spirit." The term "harassment" in its connotative expanse includes torment and vexation. The term "torture" also engulfs the concept of torment. The word "torture" in its denotative concept includes mental and psychological harassment. The accused in custody can be put under tremendous psychological pressure by cruel, inhuman and degrading treatment." 26. In the said case, emphasizing on dignity, it has been observed:- ".....The majesty of law protects the dignity of a citizen in a society governed by law. It cannot be forgotten that the welfare State is governed by the rule of law which has paramountcy. It has been said by Edward Biggon "the laws of a nation form the most instructive portion of its history". The Constitution as the organic law of the land has unfolded itself in a manifold manner like a living organism in the various decisions of the court about the rights of a person under Article 21 of the Constitution of India. When citizenry rights are sometimes dashed against and pushed back by the members of City Halls, there has to be a rebound and when the rebound takes place, Article 21 of the Constitution springs up to action as a protector...."

After having discussed the legal propositions in detail, and applying it to the facts at hand, there would not be any impediment in holding that victim's fundamental rights to live with honour and dignity has been blatantly violated by none other than the guardian of the Law, coupled with other glaring lapses and infirmities discussed supra above.

Naturally, with such affirmative findings on record, powers u/s 18 of the Protection of Human Rights Act, 1993 needs to be invoked and exercised. I must point out that the law is settled that victim of a torture is entitled to compensation, as per the dictum of the Supreme

Court in re: D K Basu and A K Johri, quoted supra above observing in Para 42 as under

42. Article 9 (5) of the International Covenant on Civil and Political Rights, 1966 (ICCPR) provides that "anyone who has been the victim of unlawful arrest or detention shall have enforceable right to compensation". Of course, the Government of India at the time of its legal system does not recognize a right to compensation for victims of unlawful arrest or detention and thus did not become a party to the Covenant. That reservation, however, has now lost its relevance in view of the law laid down by this Court in a number of cases awarding compensation for the infringement of the fundamental right to life of a citizen. (See with advantage Rudul Sah V. State of Bihar 1983 4 SCC 141; Sebastian M Hongray V Union of India 1984 1 SCC 339; Bhim Singh v. State of J& K 1984 Supp SCC 504 Saheli. A women's Resources Centre V. Commr. Of Police 1990 1 SCC 422) There is indeed no express provision in the Constitution of India for grant of compensation for violation of a fundamental right to life, nonetheless, this Court has judicially evolved a right to compensation in cases of established unconstitutional deprivation of personal liberty or life. (See Nilabati Behera V. State)

11. Applying these principles to the case at hand, the complainants deserves to be compensated decently, compensating the gravity of the adverse circumstances under which they were made to undergo the harsh and horrifying ordeal on the night of 25.03.2020.

12. Accordingly for the reasons discussed above, by invoking powers u/s. 18 of the Act of 1993 following recommendations are proposed :

a) Spl. Inspector General of Police, Nagpur Division to direct PI Shri Hiware, PSI Shri Kaware, WPC Smt. Madhuri Khobragade, WPC Smt. Chetna Bisen do pay jointly and severally compensation of Rs.2,50,000/- (Rupees Two Lacs Fifty Thousand Only) to the complainants within six weeks from date of receipt of this order failing which they would be liable to pay the amount with interest @ 12% p.a. on it from date of order till its full realization.

b) Complainants would be at liberty to launch prosecution against the erring police officers/officials under the relevant penal sections under IPC, by following the procedure provided u/s. 154 Cr. PC or alternatively by directly approaching the Court Of Justice u/s. 190 Cr. PC.

c) With an alarming rise in such incidents at the police station involving members of the legal fraternity, Director General of Police, State of Maharashtra, Mumbai to initiate seminars periodically at all the Commissionerates / Divisions for sensitization of the police force in Maharashtra State and to focus on developing a sense of responsibility, courtesy, in dealing with the citizens, victims who look at them as protectors of law.

- d) Spl. Inspector General of Police, Nagpur to ensure a proper compliance and implementation of the above noted recommendations which infact are held to be legally enforceable and binding on the government authorities as recently held by full bench of Madras High Court, Allahabad High Court, Chhatisgarh High Court.
- e) Spl. Inspector General of Police, Nagpur is further directed to proceed in accordance with the provisions u/s. 18(e) of the Act of 1993 r/w. Reg. 22 to 24 of Maharashtra State Human Rights Commission (Procedure) Regulations, 2011 for due and proper compliance of the recommendations.
- f) Ld. Secretary attached with the Commission to forward the copy of the order to the office of Additional Chief Secretary, Home Department, Mantralaya, Mumbai, Director General of Police, State of Maharashtra, Mumbai and Spl. Inspector General of Police, Nagpur for necessary compliance and to submit report accordingly.

With these recommendations complaint stands closed and disposed off.



(M. A. Sayeed)

Member

30/05/2023

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