



MAHARASHTRA STATE HUMAN RIGHTS COMMISSION, MUMBAI

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SRB/Case 5009 /2010-11 **(Division Bench)**

Name of the complainant : Shayistabi Parvin Rehman
V/s.
Superintendent of police, Buldhana.

Date : 14th February, 2014

Coram : Justice S.R.Bannurmath
(Chairperson)
Shri. Bhagwant More, Member.

ORDER

This complaint of Smt. Shayistabi Parvin Shaikh Rehman of Dewool Ghat Tal & Dist.- Buldhana is in respect of the alleged violation of human rights by Buldhana Police. The allegations are that on 16.12.2010 in the afternoon some four or five police personnel came to the house of the complainant, inquired about her husband and when she informed them that he is not present in the house, they started not only abusing her but assaulted her mercilessly with wooden piece from a chair broken by them & caused damaged to other household articles and stolen Rs.35,000/- kept in the house. She further alleges that as she was pregnant, even with her pleadings & request of neighbour gathered, the police went on beating her mercilessly she also complains that in this regard when she went to police station, she was only sent for medical hospital but no complaint is registered. It is stated

that some time thereafter as she developed stomach pain due to beating by police & immediately she was taken to Govt. hospital wherein she was a in-patient till 27.12.2010. It is stated that as the pain did not subside she was taken to Aurangabad Ghati Hospital and there it was discovered that the foetus was dead in womb itself which was removed / medically aborted and as such the present complaint to the Commission on 28.01.2011.

In response to the notice Sub-divisional Police Officer Smt.Kalpna Barawakar conducted an inquiry including recording of statements of the complainant , her husband and the neighbours. She has also recorded the statement of P.S.I Manoj Kedar and three head constables who are named in the complaint and also two women constables.

The sum and substance of the report is that the presence of police on 16.12.2010 near the house of the complainant is not denied. It is stated that as the police had received reliable information that Shaikh Rehman Shaikh Lokman the husband of the complainant and other were running a gambling business known as Worli-Matka , in order to catch them red handed the police went near the house of said Shaikh Rehman and on seeing them the husband of the complainant and others who were running matka business tried to run away. It is stated that though Shaikh Rehman succeeded in running away few others were caught on the spot and certain material objects like cash, mobile phone matka slips etc were seized and a case in Crime No. 3040/2010 was registered against the husband of the complainant and others. It is also stated that there are number of similar cases filed against not only the husband of the complainant but other family members. It is stated that the raiding party of police took action only on the open place in front of the house and never entered the house of said Shaikh Rehman nor they assaulted the complainant or stole any money. It is stated that because of filing of criminal cases against the complainant husband the complainant has filed the present false

complaint. To support this contention certain contradictions in the complaint statement of witnesses have been pointed out, including the delay on the part of the complainant approaching the hospital, the medical report & opinion indicating absence of any external injuries on the stomach which would have resulted in the death of foetus etc. It is stated that as the entire case and the allegations made before this Commission are false and baseless the complaint is liable to be rejected.

Not satisfied with the police report as well as to find out the veracity of truth or otherwise on either side, this Commission had directed its Investigation Wing to conduct independent investigation and submit a report. Accordingly the then Spl. I.G.P of MSHRC has submitted a detailed investigation report inter alia stating that though there are certain contradictions and exaggeration on the part of the complainant and her witness the possibility of police assault causing simple injury to the complainant cannot be ruled out and it is difficult to link the assault to the death of foetus in womb & no evidence about alleged theft of money by police

On perusal of the complaint and the material documents accompanying it the report of the Superintendent of Police and Investigation wing of this Commission and after hearing the complainant, the police officers and the police officer of the Investigation Wing, at the outset it is to be noted that the allegations that the police party went to the house of the complainant or near the house, to apprehend the husband of the complainant on 16.12.2010 is not in dispute. The only dispute according to the police is to the exact location that is to say inside or outside the house of the complainant. This aspect is highlighted emphatically by the police to submit that they never entered the house and assaulted the complainant.

In our view this location issue does not make much difference, so far as the allegation of assault on complainant is concerned, in the sense, if it is found there

was infact assault on her by the police, the place where exactly it happened loses its important.

Hence we have to first consider whether there was any assault on the complainant or not ?

The main corroboration to the assault or beating can be found out from the medical reports coupled with statements of the witnesses and the chain of events as disclosed from the records.

It is to be noted here itself that there is no dispute or infact there is admission by the police that after the alleged raid followed by the alleged assault or beating, the complainant went to the Buldhana Rural Police Station to lodge complaint against the police on 16.12.2010 itself. This fact is amply corroborated by the entries in the Station Diary of Buldhana Rural Police Station, the original of which was secured and perused by the Commission. In the said diary the gist of complaint of assault by police is mentioned as well as the fact that immediately the complainant was sent to the hospital for medical examination alongwith a police constable.

In this regard, when we peruse the MLC entry, it shows in history column "assault by police" & presence of two contusions- one on left upper arm and another on left thigh above knee and according to the doctor the probable weapon mentioned is 'hard and blunt'. This clearly shows, rather corroborates, the complainant's allegation of assault by a wooden piece. This is the medical evidence recorded at the earliest point of time and the reason for the police to refer her to medical examination strongly inspite of injuries no further action of registration of case is done.

The next allegation in continuation of the first one is that because of the merciless beating on the complainant by the police, inspite of her pleadings and neighbour's request not to beat her as she was pregnant, fell on deaf ears and

ultimately it is alleged resulted in the death of the foetus in the womb itself which was later aborted by the doctors.

So far as the complainant being admitted to the hospital within short span of the incident, the foetus in womb found dead and hence medically removed are not in much dispute. Only dispute is that police never beat or assaulted the complainant much less on her stomach causing the death. It is contended by the police that as per the medical opinion in the absence of any external marks on the stomach such eventuality has to be overruled.

At this stage if one looks into the discharge card of medical college and Hospital, Aurangabad, it is to be noted that in the history column itself the complainant has reiterated assault on her by police resulting in developing unbearable stomach pain and her hospitalization. This aspect is corroborated by the medical reports of Civil Hospital Buldhana and Aurangabad.

No doubt the police are relying upon the opinion of the doctors sought by them in this regard to state that in the absence of direct hit on the stomach the abortion or death of child in womb is ruled out. It is to be noted that the doctors who gave this opinion have been asked specific questions and especially the first two questions:-

1. Was there any complaint of the patient about beating her on stomach ?
2. Whether as per MLC injury report dated 16.12.2010, the injuries noted could result in damage to the womb or the child in the womb.?

& to these questions the opinion of doctors is of course in negative. It is to be seen that the complainant has mentioned both in her first complaint to the Buldhana Rural Police and to the doctors, in general terms about the alleged assault by the police. No doubt she has not made specific reference to any

body part and more particularly to her stomach. In our view those questions to the doctors who have not examined the complainant immediately would be of no consequences. Similarly, by merely looking at MLC report dated 16.12.2010 since only two contusions are visible on arm and thigh and rightly the doctor opined these injuries cannot cause directly the abortion.

In our view this opinion of the doctors produced by the police has to be ignored especially when the questions were intelligently framed by the police, without finding out the probable cause of death of the foetus in the womb or possibility of death of foetus to causes like trauma, shock etc.

For our purpose if the story of the complainant is corroborated by medical evidence even on general or basic terms, that would be sufficient to draw an inference one way or the other. It is common knowledge that for causing abortion or death of foetus in the womb there may be various reasons including trauma or shock, without there being actual assault on the stomach itself and in such eventuality there could not be any external marks or injuries on the stomach.

Be that as it may in our view as the overall picture of the alleged assault on complainant by the police on 16.12.2010, her attempt immediately to report against the said police to the Buldhana Rural Police, her being referred by the police for medical examination and the entries in the MLC Register & inaction on the part of police to register a case against police prima-facie established that the police did assault the complainant for no fault of her at least resulting in two contusions on upper arm and thigh. This fact is further corroborated by the statements of witnesses during inquiry by the Superintendent of Police and the Investigation Wing of this Commission.

No doubt certain contradictions in these statements probablizing giving exaggerated version by the neighbour or the people present have been much relied upon by the police in their defence, but in our view as this Commission is not required to apply strict principle of appreciation of evidence like in the criminal trial before a court, even if there is prima-facie material it would be sufficient to give the findings for or against the complaint's allegation of violation of human rights by atrocious act of police.

In the present case admittedly the complainant had nothing to do with the alleged police raid except the fact that she is the unfortunate wife of the alleged criminal involved in matka gambling. The medical evidence and the police records fully corroborates the version of the complainant and rather falsify the police story.

We are not impressed by the argument that death of foetus cannot be totally overruled because of the doctor's opinion we have already referred to the same earlier. Hence taking into consideration of the chain of event, the close proximity between the assault & the death of fetus, it is possible to hold that death is possible if not due to direct hit on stomach it is possible due to overall effect of trauma & shock also.

In so far as theft of money from the house of complainant, we do not find any acceptable ground & hence hold that the same is not established.

On detailed consideration giving our anxious thought, we find the complaint of the assault or beating by the police on the innocent woman not only resulted in physical harm to her but also violates the human rights of a free citizens .

In the result we find that on 16.12.2010 the concerned police did assault or beat the complainant Shayistabi Parvin Shaikh Rehman without

any reason and violated her human rights. Hence we make the following recommendations :-

- (a) The State Govt. should instruct all the police officials to respect the human right of every free citizen and not to indulge in merciless beating.
- (b) Even in cases of raids, police should restrain themselves in so far as family members of the alleged criminals, especially when they are not connected with the alleged crime.
- (c) For the violation of human rights of Smt.Shayistabi Parvin Shiakh Rehman we award a compensation of Rs.1,00,000/- (Rs. One Lac only) to be paid to the victim Shyistabi Parveen Rehman within four weeks from the date of receipt of this recommendation and report compliance.

(Bhagwant D.More)
Member

(Justice S.R.Bannurmath)
Chairperson

Mumbai.