



MAHARASHTRA STATE HUMAN RIGHTS COMMISSION

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SHRC/SRB/07 /2014/

Date: July 2014

Case No. – 3528/2007-08

Name of the complainant : Premkumar Batham
Rajkumar Batham
16, Ankur, G.K. Road,
Hindmata, Dadar, Mumbai – 14

Vs.

Name of the Respondent : The Dy. Commissioner of Police
Zone – IV,
Mumbai

The Sr. Police Inspector
Bhoiwada Police Station
Parel, Mumbai

Shri. Suresh Patil
Police Inspector
BKC Police Station
Mumbai

Date : **7 July 2014**

Coram : **Justice S. R. Bannurmath, Chairperson**

ORDER

This complaint is filed by one Shri. Prem Kumar Gupta (Batham) and his brother Rajkumar Batham against Shri Suresh Patil the then Police Inspector of Bhoiwada Police Station alleging false implications, illegal arrest and detention and violations of the guidelines issued by the Hon'ble Supreme Court in D.K. Basu Case.

It is to be mentioned here itself that though the complaint itself runs into 99 typed pages mostly reciting various pronouncements, statutory provisions etc., the gist of the complaint in nutshell is as follows.

There is some dispute regarding ownership of a taxi cab between the complainants Shri Rajkumar and his brother Premkumar on one hand and one Umesh Gawli and his brother Nilesh Gawli on other hand. Both the parties claim ownership of the said taxi based on certain documents and transactions.

In this regard it is alleged that on 18.09.2006 the complainant Premkumar approached the Respondent Shri. Suresh Patil the then Police Inspector of Bhoiwada Police Station complaining the illegal acts of Shri Nilesh Gawli and his brother of cheating threatening and also taking illegal possession of his taxi cab by the said persons. It is alleged that the Police staff and the Police Inspector behaved rudely by making him to wait for sometime and inspite of such written complaint, the said Police Inspector did not take any action even by registering a case and as such on 25.09.2006 the complainant approached Dy Commissioner of Police Zone – IV bringing to his notice the inaction on the part of the said Police Inspector and staff of Bhoiwada Police Station. It is stated that the Dy Commissioner of Police considered the application and in turn directed the said Police Inspector to take action on the complaint. It is the case of the complainant that aggrieved by the complainant's approach to the superior officer the said Police Inspector instead of registering a case filed by the complainant, in collusion with the said Nilesh Gawli and his brother booked a case in crime No. 285/2006 u/s. 468, 471, 420 and 182 IPC against the complainant himself stating that this was registered on the basis of the statement of Umesh Gawli and arrested the complainant. It is stated that he was made to suffer in lock up and judicial custody for nearly 12 days and later on got released on bail. It is also complained that even during that time complainant was in the lock up, he was

treated badly. On these among other grounds it is stated that the said Police Inspector Shri Suresh Patil has violated the human rights of the complainant and hence prays for taking appropriate action.

Notice was ordered and reply was filed by the concerned Police denying these allegations of collusion, illegal arrest and violations of D.K. Basu guidelines.

From the records it is seen that the matter was heard by Court Hall No.2 presided by the then Member of this Commission Justice V.G. Munshi. The records disclose that the matter was referred to the Investigation Wing of the Commission for enquiry and after filing of the report the matter was heard for sometime till 2012. Before the order could be passed as the Hon'ble Member retired, the matter was pending enquiry and only after I took charge as Chairperson and in view of the transfer application filed, it was transferred to Court Hall No.1. As from the records it was noticed that the criminal cases CC No. 824/2006 against the complainants was pending enquiry, initially the Commission adjourned the matter to be taken up subject to the result of the criminal case as noted by my predecessor. However, once again the complainants submitted that the result of the criminal case has nothing to do with the present complaint of violation of human rights by the public servant. After hearing both the sides the stand taken by the complainants appeared to be justified and as such in order to know the developments, notice was issued to the Respondents. Shri. Suresh Patil through his Advocate Devendra Yadav appeared and reiterated the objections already filed interalia stating that this complaint has been filed before this Commission only because the complainants feel that they have been aggrieved only because the said Police Inspector has filed a case against Premkumar and he was arrested and detained till grant of bail. It is stated in the objections that the said Police Officer has performed his

duties honestly and within the bounds. It is also alleged that the said complaint is barred by limitations.

Having heard both the sides and after perusal of the entire bulky records at the outset, the objection that the complaint is time barred has to be dealt with. It is to be noted that the alleged incident of violation is dated 24.10.2006 and the present complaint is received on 19.10.2007. Under Section 36 (2) of the Protection of Human Rights Act the limitations for entertaining the complaints being one year from the date of alleged violation, the present complaint is within the time limit prescribed and hence the objection of Respondents is rejected.

Now coming to the merits of the case, the records, most of them produced by the complainant obtained by him through provisions of Right to Information Act disclose a disturbing feature as to the alleged impartial duty of the Police Inspector. Time and again it is laid down that whenever any aggrieved person approaches a Police Station for registration of a criminal case, the Police should register the case first and then after due enquiry proceed to take action as per law either close the case or proceed with the investigation, arrest etc. In the present case it is to be noted that though the complainants approached the Bhoiwada Police as long back as on 18.09.2006 no action was taken in respect of their complaint. Because of this inaction or casual approach, of the Police the complainant was forced to approach the superior officer namely the Dy Commissioner of Police. Even thereafter without entertaining the complaint of the present complainants, as the records reveal after recording the statement of Umesh Gawli and his brother and one Balbir Singh the criminal case 285/2006 is stated to have been registered on 24.10.2006 against the present complainants. The copy of the statement of Umesh Gawli recorded alleged to have been on 24.10.2006 is also suspicious especially the correction of date below the

signature of the said Shri. Umesh Gawli. Though in this statement said Umesh Gawli alleges that as his wife was suffering from brain cancer in 2001 and for this purpose he was in need of money and as such approach Balvir Singh Sandhu and in turn to Shri Premkumar Batham and orally agreed to give the taxi with permit to Shri Premkumar Batham and in turn Shri Premkumar Batham will pay him certain amount. Thereafter it is alleged that on 13.03.2003 Shri. Premkumar took the signatures on some papers. It is alleged that the said Premkumar has created forged affidavit, power of attorney and agreements and thus, committed criminal offences.

It is made clear here itself the Commission is not going in detail as to the justification or correctness of the criminal case 285/2006 C.C 824/2006 as the same is pending trial before the Metropolitan Magistrate. As such the allegations of Umesh Gawli and counter reply by the complainants cannot be gone into by this Commission. However, as the conduct of a public servant namely Shri Suresh Patil the then Police Inspector of Bhoiwada Police Station especially his inaction in not registering the complaint of Premkumar and on the other hand registering a case in suspicious circumstances against the present complainant Premkumar himself is being considered only to see whether the entire conduct of the Police Inspector was violative of human rights of the complainants. It is made clear any incidental reference to the criminal case against the complainant or comments by the Commission should not be treated as finding in respect of the correctness or otherwise of the said complaint by Umesh Gawli which in fact has to be decided by the criminal court.

It is to be noted that during the independent investigation by the investigation wing of this Commission said Umesh Gawli has admitted that the statement in his complaint that his wife was suffering from brain cancer in 2001 is not correct and in fact she was detected suffering from cancer in 2004. Similarly,

the correction of date below his signature in the said statement is also stated to be by someone else and without his knowledge. He has admitted the said statement was not read over to him by the concerned Police Inspector. These aspects create doubt as to the veracity of the defence of the Police Inspector. Added to this the facts disclosed during the enquiry by the investigation wing of this Commission throw sufficient light and strengthen the doubt as to the conduct of the said Police Inspector Shri. Suresh Patil. It is to be noted that the alleged forged documents said to have been created by the complainant with the help of an Advocate and surprisingly though his name and address was available, no efforts were made to record his statement. There appears to be no attempts made to trace him even till filing of charge sheet. The investigation wing of this Commission found out that the said Advocate died on 30.04.2010. It shows that after the registration of the case for four years the Police Inspector deliberately evaded making inquiries with this Advocate for the reasons best known to him.

These facts as noted above viz. non-registration of the complaint of Premkumar Batham and on the other hand registering a criminal case against him for serious offences like forgery, fraud etc. that too on the suspicious alleged statement of Umesh Gawli, the deliberate attempt to evade recording of the statement of the Advocate who have notarized the affidavit and power of attorney till filing of the charge sheet creates reasonable doubt as to the conduct of the Police Inspector who was investigating officer. All these aspects taken into consideration lead to only conclusion that the said Police Inspector Suresh Patil was miffed by the present complainants approach to the superior officer and possibly with the collusion of Umesh Gavli and others and at their instance registering of the complaint leading to arrest of the complainant Premkumar. As such the Commission is of the view that the said Police Inspector Shri Suresh Patil has violated the human rights of the complainant. It is once again made clear that whatever is noted above is only in respect of the conduct and violation

of human rights of the complainant by Shri. Suresh Patil – Police Inspector and this cannot be used as conclusive findings in the criminal case No. 285/2006 pending trial. The criminal court is free to decide the case on the merits and evidence produced before it.

In the result the Commission makes following recommendations:-

- A) The State Government / Home Department to initiate appropriate action against Shri. Suresh Patil – Police Inspector for his biased action of non-registration of complaint of Shri. Rajkumar and his brother dated 18.09.2006 and refused to take action against the persons named in the said complaint.**
- B) For the serious violation of rights of the complainants a compensation of Rs. 75,000/- to be paid to the complainant. The State is entitled to recover the same from the Shri. Suresh Patil – Police Inspector.**
- C) The compensation shall be paid in eight weeks from the date of receipt of this recommendation and action taken report to be filed in two weeks thereafter.**

The Secretary to communicate this order to the parties concerned.

**(Justice S. R. Bannurmath)
Chairperson, SHRC**