



## MAHARASHTRA STATE HUMAN RIGHTS COMMISSION, MUMBAI

Administrative Staff College Compound, 9, Hajarimal Somani Marg, Opp. C.S.T. Mumbai - 400001.  
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07.03.11

\* Case No CPN /2293/2010-11. /560

Name of the complainant : Shivpujan p Kumbhar,  
Pacho Purshottam Kumbhar Estate,  
Khot Wadi, IPS, 6<sup>th</sup> Road,  
Santacruz(W), Mumbai-56.

V/S.

Police Commissioner,  
Zone-IX,  
Bandra (W),  
Mumbai-400 050.

Date : 17.01.2011.

Coram : Justice Kshitij R Vyas (Former Chief Justice), Chairperson

### ORDER

The complainant with his learned advocate Shri Yatin N Shah is present. Respondent Shri D.B.Kokare, PSI and Shri K.B. Hegade, PSI from Santacruz police station are present at the time of hearing.

It is the grievance of the complainant that PSI Shri Hegde and his staff of Santacruz police station on 13.06.2010 entered his house forcibly at about 21 hrs., abused and arrested him in an false case.

In the report submitted by DCP Mumbai, while denying the allegation made in the complaint it is submitted that on 13.06.2010 at about 11 hrs., Corporater Shri Mohan Lokegaonkar, his security person and nearly 100 to 150 Shivsena workers went to Shastri Nagar zhopadpatti to see the construction of transit camp. Shri Kalidas Mangela the security man was clicking photographs of transit camp, when Shri Yogendra Gawade, Supervisor of Pioneer camp objected him, due to which they abused and assaulted and thereafter the said Kalidas attacked him with knife, due to which he was seriously injured and hospitalized at Nanawati hospital for treatment. Statement of 15 witnesses were recorded and accordingly offences were registered against accused persons including the complainant U/S 307,324,143,144,147,148,149 IPC in Cr. No 291/10. Police Inspector, Shri Hegde arrested the complainant being one of the accused in the above stated crime. Thus the police justified the arrest of the complainant.

Having heard the parties it appears that the charge sheet is already filed against the accused and the accused are also released on bail by the concerned court. Thus since the case is subjudice it is not possible for the Commission to enter in to merits of the case.

Learned Advocate Shri Shah has however, seriously challenged, the manner in which the complainant was taken to the police station. According to him the police personal of Santacruz police station forcibly barged in to the house of the complainant and without allowing the complainant to change cloths, forcibly took him to the police station without giving any notice, informing him regarding his involvement in the offence. This act of the police is in gross violation of his human rights of the complainant. In support of his submission he denied on the decisions of the Bombay High Court rendered in Criminal Writ Petition No 1580 of 2008 decided on 21<sup>st</sup> August 2008. In that case the petitioner was kept in custody without any authority of law for 4 days, and thereafter he was arrested in a case in which later on he was charge sheeted in connection of which he faced the trial. The Hon'ble High Court criticized the police action by not following the provisions of Section 160 of the Criminal Procedure Court. Before the Hon'ble High Court, a circular of the Police Commissioner, dated 16 August, 2008 was produced directing all the police officers to send notice in writing to the person to be examined as witness or as a suspect. In view of this the police in the instant case should have issued the notice to the complainant before taking him to police station.

As the complainant has stated above the complainant is released on bail no further action is necessary. However, in view of the specific provision of Section 160 of the Criminal Procedure Court, practice of calling people to the police station by work or by sending constable is not permissible. This is particularly in view of the fact that the police Commissioner as well as the DGP Maharashtra State have already issued circulars directing all the police officers that when they need persons to be examine as a witness or as a suspect they shall send a notice in writing to the said person, it is obligatory for all the police stations to follow the law as well as the circulars issued by the top police officers.

In view of above it is recommended that the DGP Maharashtra shall see to it that the circular issued by him dated 16 August 2008 regarding sending of notice to the witness or to the suspect be followed in letter and spirit.

With this recommendations the case is accordingly ordered to be closed.

Mumbai.



sd/-  
(Justice Kshitij R. Vyas)  
Chairperson.