



MAHARASHTRA STATE HUMAN RIGHTS COMMISSION

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MSHRC/MAS/09/2016/
Date: 09/09 /2016

MAS/Case No. – 4649/2009-10

Name of the Complainant : A. K. Inamdar
A/2, Shivshlok, Pendse Nagar,
Dombivali (E), Dist. Thane

V/s.

Name of Respondents : Dy. Commissioner of Police,
Zone – 1, Old Bazaar Gate Police Strn.,
Mumbai – 400 001

Date : **09th September, 2016**

Coram : **M. A. Sayeed, Member**

ORDER

I have gone through the record carefully, and scrutinized the various documents, placed on record by complainant Shri A. Inamdar in support of his contention as well as considered the response filed by Dy. Commissioner of Police Shri Vishwas Nagre-Patil on 17.03.2010.

1. Factual Background:

Complainant Shri Inamdar came with a case that he worked with Siddharth College from 1987-2005 and at the relevant time was working as full time professor in the said college. One Ms. Chitra Salunke was also working as lecturer in the same college and in January, 2005 she moved a complaint with Mumbai University against complainant Shri Inamdar, alleging that on 10.01.2005 he entered her

classroom, misbehaved with her, humiliated and threatened her. A further allegation made by her that on 19.01.2005, complainant entered her chamber and made an attempt to outrage her modesty, but could not succeed as some of the students entered her chamber at that relevant time and the complainant left her chamber by insulting and abusing her on her caste. Pertinent to note that an Enquiry Committee was set up to look into the authenticity of these allegations. This Committee comprised of Justice (Retd.) K. K. Baam, Prof. Parimala Rao, Principal of Government Law College, Dr. Vijay Ghormade Principal of Advani College of Law. This Committee after conducting an enquiry recorded a finding of '**not guilty**', in favour of the complainant by its report dated:08.08.2008.

It is the grievance of complainant that on 31.07.2009 again a report came to be filed by Ms. Chitra Salunkhe against him with Azad Maidan Police Station accusing him of abusing and humiliating her on account of being a member of Schedule Caste as well as attempted to outrage her modesty on 10.01.2005.

Complainant urges that on or about 10.08.2009 he came to be arrested by the Asst. Commissioner of Police Shri Marathe, was illegally detained in custody and was harassed and tortured and produced before the Magistrate somewhere on 12.08.2009. None of his family members were informed i.e., his wife and son of his detention and he was made to undergo this turmoil by the arbitrary, illegal action of ACP Shri Marathe who was incharge of this particular case and this action amounted to violation of his human rights and therefore sought indulgence of this Commission under the provisions of Section 12 of the Act.

2. These accusations came to be strongly controverted by ACP Shri Marathe by submitting his response before this Commission on 17.03.2010, asserting that on the report of Mrs. Chitra filed on 31.07.2009 relating to the alleged incident of 10.01.2005, an offence u/s. 354 IPC and Sec. 3(1)(x)(xi) under the Schedule Caste & Schedule Tribes (Prevention of Atrocities Act) 1989 came to be registered against him vide Crime no. 153/09 and was arrested on 10.08.2009, and produced before the Ld. Magistrate on 12.08.2009, sought his police custody and after completion of the investigation submitted charge sheet against him on 27.11.2009. In other words charges of illegal detention, humiliation and harassment at the hands of the Investigating Officer ACP Shri Marathe is disowned and denied in toto.

3. Keeping in mind these rival contentions, I would now turn to highlight on the legal principles, settled norms governing and controlling operation of Protection of Human Rights Act.

Let us analyze the legal principles governing this concept which originates from Art. 21 of our Constitutions:

The Doctrine of Human Rights has been highly influential within International Law, Global and Regional Institutions, Action of the State and Non -Governmental Organization form a basis of the policy worldwide. The main concept of human right suggest that "If the public discourse of peace time global society can be said to have a common moral language, it is that of Human Right." Human Rights encompasses a wide variety of right viz. Right to a fair Trial; Enslavement; Free Speech; Right to Education; Right of Health; Right to proper and soothing medical care; Right to have pollution free environment; Right of Senior Citizens etc. In other words it can be said

that every human being has a right to live with dignity, freedom and justice. Of late the definition has been enhanced to include Right to Good Governance by State, which infact flows from the spirit of preamble to our Indian Constitution.

Thus it can be seen that human rights are set out in the Universal Declaration of Human Rights of 1948 and codified and further spelled out in series of International Convention, laying down minimum standards to ensure human dignity, drawing on the values found in different religions and philosophies. The gist of all this exercise is reflected from the Preamble of Indian Constitution and embedded under Article 21 of our Constitution.

To conclude, human right to be more precise is a right to live with honour and dignity and this right gets the legal sanctity from our Constitution, emanating from Art. 21 of our Constitution. These legal principles will have to be borne in mind while evaluating the merits of the present complaint.

4. Analysis and reasoning:

Presently we are concerned with the question and of course very crucial and relevant question and that is whether a case of violation of human right has been made out by the complainant and if yes, the reliefs to which he would be entitled. While reflecting on the factual background I have pointed out that a report about the incident of January, 2005 was lodged with the police almost after 4-5 years, in July, 2009. Law enforcing agency seems to have swung into action very promptly as after registering the FIR on 31.07.2009, complainant Shri Inamdar came to be arrested on 10.08.2009 and the subsequent events

are the most material and important factors for determination of the question under consideration. I am again repeating that complainant was arrested on **10.08.2009** and was produced before the Ld. Magistrate on **12.08.2009**.

At this stage I would like to first refer to the provisions contained in Art. 22 of our Constitution, which gives a basic fundamental right of protection against arrest and detention and reads as under:

22. Protection against arrest and detention in certain cases:

(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate."

Sub Clause 2 imposes a mandate on the police to produce an arrested and detained person before the nearest Magistrate within a period of 24 hrs of such arrest. The law makers in their wisdom have conveyed the importance and significance of these provisions "**shall be produced**". It would not be out of place to mention here that based on these principles, as content in Art. 22 of our Constitution, corresponding provisions came to be incorporated in the Cr. PC i.e. Sec. 50, imposing a duty on police officer to inform an arrested person,

grounds of arrest and right to bail. Then Sec.50A, imposing an obligation on the person making arrest, to inform about the arrest to his friend, relative or such other person as may be nominated, Sec. 51 contains provisions regarding search of an arrested person while Sec.56 imposes a duty of taking the arrested person before Magistrate when such arrest is made without warrant and the most important provision is contained in Sec. 57 which provides that no police officer shall detain in custody a person arrested without warrant for a longer period and that is for not more than 24 hours unless an order is obtained or secured from a Magistrate. The law on this point has been aptly laid down by Supreme Court in the case of D. K. Basu V/s. West Bengal AIR 1997 SC 610, formulating 11 specific requirements and procedure that the police and other agencies have to follow for the arrest, detention, and interrogation of any person. These requirements are necessary to reproduce here:

“ i) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register

ii) That the police officer carrying out the arrest shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be counter signed by the arrestee and shall contain the time and date of arrest.

iii) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the

attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

iv) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

v) The person arrested must be made aware of his right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

vi) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

vii) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The 'Inspection Memo' must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

viii) The arrestee should be subjected to medical examination by the trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory, Director, Health Services should prepare such a panel for all Tehsils and Districts as well.

ix) Copies of all the documents including the memo of arrest, referred to above, should be sent to the Magistrate for his record.

x) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

xi) A police control room should be provided at all district and State headquarters where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board."

Reverting to the facts at hand, admittedly there is a glaring, blatant breach of this mandate of law because from the copy of the Remand Application placed on record at Exhibits 'A' and 'D' the date of the arrest is **10.08.2009**, place of arrest is Azad Maidan Police Station and the time is 1320 hours and came to be produced before the Ld. Magistrate for the first time seeking his police custody on **12.08.2009** at 01.00 p.m. Evidently, calculating the period from time of his arrest on 10.08.2009, till his production before the Ld. Magistrate, it exceeds more than 24 hours i.e. almost after 48 hours of his arrest.

The most damaging blow which exposes the vindictive mind of the law enforcing agency are the grounds for police custody. In the last para of the Remand Application at Exhibit 'D' it was submitted that complainant is alleged to have written one poem to the alleged victim Mrs. Chitra and for handwriting confirmation the police wanted his custody to obtain his writing and forward it to handwriting expert and the other ground was collection of more evidence against him. A detail order seems to have passed on this Remand Application and reading of the order indicates the casual way and manner in which the entire matter was dealt with by it. Pertinent to note that reading of the order passed by the Ld. Magistrate indicates his time of production at 01.00 p.m. and the most material and important fact of the **complainant making grievance and charge of ill treatment at the hands of the police. (emphasis supplied)**. It further emerges that investigating officer was absent and was represented by one remand officer Shri A. S. Kengar who made a very candid submission before the Court by saying that police custody was not required. I feel that entire order of

the Ld. Magistrate should be reproduced in verbatim as it goes to the crust of present issue.

“ORDER: The accused is produced before me at 1.00 p.m. He has complaint against the police of illtreatment. The investigating officer is absent. However, Remand Officer Shri A. S. Kengar is present. Read the remand application. The police custody is asked in order to collect some evidence in respect of alleged crime. However, orally the remand officer says that police custody is not required, however attendance be given to the accused. Ld. APP is absent. Ld. Advocate Shri Ujagare on behalf of complainant is present and has submitted that more investigation is required to be done and for that purpose, police custody of accused is essential. The complainant personally has addressed to the Court by mentioning the history of this case and about improper investigation carried out by the police machinery in this case since beginning. Heard Ld. Advocate for accused and accused in person. The accused has submitted that the complainant has narrated a concocted story. The alleged offence is u/s. 354 of IPC and u/s.3(1)(10)(11) of The Atrocity Act. So far as sec. 354 of IPC is concerned the police officer has already collected the poem written in the handwriting of the accused. One paper has been shown to me which is a photograph of the cabin of the complainant, but accused says that it is a cabin of the principal. However in respect of damage caused to that room, no section has been levelled by the prosecution in this case. So far as sections of Atrocity Act are concerned, the investigating officer is not saying in his remand application for granting police

custody. After hearing the complainant, it appears that more investigation is required to be done in respect of the allegations made by her which still the police have not done. Hence, police custody of accused is extended for 2 days. The accused is remanded to police custody till 14th August, 2009.”

As per the guidelines framed by the High Court of Judicature (Appellate side) Bombay for the guidance of the Cri. Court and there subordinate Court, under Rule 3 whenever an allegation of ill treatment is made by a prisoner, it is incumbent and mandatory on the part of the Magistrate to examine his body if consented by the prisoner, place on record result of his examination and if the grievances are found to be well founded than to record complaint, cause the prisoner to examine by medical officer or registered medical practitioner as provided u/s. 54 of Cr. PC and then report the matter to the Session Judge. Sub Rule 5 of Rule 3 provides that the Session Judge shall arrange for immediate Magisterial enquiry in the complaint and depending upon the result of the investigation to the concerned Magistrate for further action.

Surprisingly, the Ld. Magistrate in the present mater seems to have lost sight of this very important provision of the guideline and though recorded about complainant having made grievance of ill treatment at the hands of police but remanded him to police custody till 14.08.2009. I must haste to clarify that I am reflecting to this important aspect because it goes to show the way investigating officer dealt with the matter in a most casual and arbitrary mode, completely ignored the mandate of the Constitution as well as the mandate of the provisions contained in the aforesaid relevant sections of Cr. PC,

particularly detaining the complainant for more than 24 hours without producing him before the Magistrate, took steps of seeking his police custody after almost 48 hours of his arrest and to add further salt to the mental agony and turmoil, despite complainant making a specific grievance of ill treatment his submission was not considered and was remanded to police custody for 2 days i.e. upto 14.08.2009.

Another material and important development in the judicial proceeding needs to be mention here is the fact of complainant's exoneration by the Court of Session Greater Bombay, after the case came to be committed to the said Court. The Ld. Session Judge by his detail order dated:24.07.2012 accepted complainant's contention about the entire prosecution being biased and vindictive and discharged him of the offence u/s. 354 IPC and 3(1)(x)(xi) of Schedule Caste & Schedule Tribes (Prevention of Atrocities Act) 1989. Copy of the order is filed alongwith Annexure 'B'. It is undisputed that State of Maharashtra challenged this order of discharge before the High Court of Judicature at Bombay vide WRP NO. 532/2012 wherein order of the Ld. Session Judge was sustained partly, so far as it relates to discharge of the offences under Schedule Caste & Schedule Tribe (Prevention of Atrocities Act), 1989 and order of discharge for the offence u/s. 354 was set aside by observing that one has to look into the effect of Sec. 473 Cr. PC.

Be that as it may, with the clenching material which stands establish from the documents on record I have no hesitation to come to the conclusion that the Investigating Officer Shri Marathe by misusing or rather by getting influenced of his post, took the law into his own hands by contravening the mandatory provisions of the law

referred above which evidently resulted into miscarriage of justice and violation of human rights of the complainant. It would be useful to refer to Art. 5 of the Universal Declaration of Human Rights, adopted by the United Nations General Assembly 1948, which provides that “no one shall be subjected to torture or to cruel, inhumane or degrading treatment or punishment”. Considering the particular importance placed on the prohibition of torture, the traditional obligation of the States to respect, to protect and to fulfil human right is complemented by a further obligation to prevent torture and other forms of ill treatment. Torture is – any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person ----, this definition is formulated by 1984 United Nations Convention against Torture.

5. It would be necessary to throw more light on certain other mitigating circumstances, essential for an effective adjudication of the issue in question.

It emerges from the material on record that initial appointment of Mrs. Chitra Salunkhe was strongly opposed by the present complainant (being the Member of the Interview Committee) as at the time of interview she did not produced her degrees and other important documents relating to her academic performance. However, the then Secretary Shri D. J. Gangurde of People Education Society which is running Siddharth Law College appointed her. It is undisputed that the present complainant challenged her appointment and selection, and questioned the propriety of her appointment by filing WP 1209/2007 against her and against Chairman, Secretary of the Society as well as the authorities of Mumbai University. High Court,

Bombay by its Judgment and order dated:06.05.2009 accepted complainant's contention and quashed appointment of Mrs. Chitra and at the same time directed the Competent Authority in the Mumbai University to pass final order in accordance with law, passed a further order to central Govt. to constitute a special team headed by police officer not below the rank of DIG to examine all the cases of forged degrees. Pursuant to these directions, the Chairman of the governing body of People's Education Society served an order of removal of service w.e.f 30.05.2009 on Mrs. Chitra Anant Salunkhe. (Copy of the orders of the High Court and the Chairman of the Society are at Exhibit 'C').

6. It is very important to note that, though complainant was exonerated of the charges levelled by Mrs. Chitra, in the enquiry conducted against him by a Committee constituted by order of Registrar of Mumbai University on 08.08.2008, (which related to the very same incident of January, 2005), and then after order of the High Court and removal order by the University in May, 2009 it is in July, 2009 that the law enforcing agency readily registered FIR on her behest, relating to the incident of January, 2005 and then virtually contravene the mandate of law, as discussed above.

7. It is made clear that these observations are being made with reference to the issue of violation of human rights and would have no bearing on the merit of the trial going on before the Ld. Magistrate and infact listed for hearing on 14.09.2016. But all said and done I am pained to point out as to how the mandatory provisions of law came to be virtually trampled (checked) by no one but the law enforcing agency who in the present matter assumed the role of law breaker.

8. The foregoing discussion leads to an irresistible conclusion of violation of honour, dignity of the complainant who held the position of a teacher. This reminds me of a quotation from Guru Geeta wherein Lord Shiva praised the Universal Guru thus: **“Gurur Bramha, Gurur Vishnu, Gurur Devo Maheshwara, Guru Sakshat Parabh Brahma Tasmiya Sree Guraven Namah” (Guru is Brahma, Guru is Vishnu and Guru is lord Shiva -)** This is the reason why we Indians go to a guru a teacher and place a teacher on a pedestal just below the parents.

Now, here is a complainant who after having an unblemished service of almost more than 30 years just at the end of his career made to suffer due to callousness, inhumanity, conduct of a police officer holding a responsible position of Assistant Commissioner of Police.

9. Foregoing reasonings, leads to a final conclusion about violation of the human right of the complainant which warrants issuance of certain directions to the Home Department in Government, besides an award of interim compensation to the complainant which of course cannot said to be a substitute for the agony and the trauma felt and suffered by him and his family, but certainly can be a solace for their sufferings. **In the result the following recommendations are made:**

a) Additional Chief Secretary, Home Dept, is requested to initiate a disciplinary enquiry against Assistant Commissioner of Police Shri Suresh Marathe for conducting a biased, vindictive, arbitrary investigation by committing breach of mandatory provisions under Sec. 50, imposing a duty on police officer to inform an arrested person, grounds of arrest and right to bail. Then Sec.50A, imposing an obligation on the person making arrest, to inform about the arrest to his friend, relative or such other person as

may be nominated, Sec. 51 contains provisions regarding search of an arrested person while Sec.56 imposes a duty of taking the arrested person before Magistrate when such arrest is made without warrant and the most important provision is contained in Sec. 57 which provides that no police officer shall detain in custody a person arrested without warrant for a longer period and that is for not more than 24 hours unless an order is obtained or secured from a Magistrate. And of course provisions of Art. 22: Protection against arrest and detention in certain cases:(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice; (2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.”

- b) Additional Chief Secretary, Home Dept, requested to pay compensation of Rs.3 lacs (Rupees Three Lacs Only) within 6 weeks from the receipt of this order. In default to pay an interest of 12.50% p.a. on the awarded amount till its actual realization.
- c) Compliance of these directions be made within six weeks and report be made to this Commission for further necessary action.

The Ld. Secretary of this Commission to forward the copy of recommendation passed by this Commission to the concerned departments for information and action in accordance with the provisions of section 18(e) reproduced supra above. With these directions the case stands closed and disposed off.

(M. A. Sayeed)
Member