

MAHARASHTRA STATE HUMAN RIGHTS COMMISSION

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SHRC/VGM/01/2009/ 247

Case No. – 59/23/2006-07

Name of the Complainant : Ramdas Athawale
91, "Lumbini", Sector – 7,
Charkop, Kandivili (W),
Mumbai – 67

Vs.

The Commissioner of Police
Pune

Date : 5 January 2009

Coram : **Justice V G Munshi, Member**

ORDER

Read the allegations made in the complaint and the report received from Addl. Commissioner of Police (Crimes), Pune City, Pune. Read the case papers.

2. On the basis of report given by one Faim Usman Shaikh offence at crime no. 82/2006 u/s 302, 143, 147, 148, 149 r/w Sec. 4 (25) of the Arms Act was registered in police station Manavadi on 16.02.2006 in respect of murder of two persons. In the present complaint, it was alleged that, four persons whose names are written in the complaint, were unnecessarily implicated in this crime by the Police. According to the complainant, the police arrested them, taken to the police custody and later on they were remanded in Magisterial custody. According to the complainant these persons did



not commit the said murder. Therefore, complaint was made to the Addl Commissioner of Police (Crimes), Pune City, Pune and detailed inquiry was demanded in this matter. Thereafter, the police recorded statements of the witnesses and arrested real accused persons. During investigation it was transpired that, all these four persons, whose names appear in the complaint, really did not take any part in the commission of the offence. Therefore, PI Police station, Vanavadi on 10.05.2006 moved application u/s 169 Cr PC before Judicial Magistrate First Class, Pune. The Court passed the order and discharged all these four accused, in the said crime.

3. It was the grievance made by the complainant that **firstly**, PI Police Station Vanavadi falsely implicated these persons in the said crime. **Secondly**, there was delay in moving the application for discharge u/s 169 Cr PC. Therefore, the complainant prayed for inquiry and proper action in this matter.

4. The Respondent Addl Commissioner of Police (Crimes), Pune by filing their report denied and disputed all the allegations made in the complaint.

5. Therefore, it is necessary to view the case of the complainant in the light of facts and circumstances brought on record.

(i) Admittedly, all four persons, whose names are written in the complaint, were arrested by PI Vanavadi Police Station on 16.2.2006 and they were discharged by the Court on 10.05.2006, on the ground that, during investigation it was transpired that, these persons did not commit offence as alleged. Thus, these accused persons remained in the custody for a period of about three months though no evidence was found against them.



R/R,HRG - RECOM.

According to the complainant it was brought to the notice of the respondent that these persons did not commit any offence nor they were connected with commission of the crime and even then such application for discharge was not moved earlier. In other words according to the complainant there was delay in moving the application u/s 169 CR PC. Had it been the fact that, there was no evidence against these persons, of having committed any offence, it was incumbent upon the Respondent, to move such application at early date. It is not explained why such application was not moved earlier. Thus, these persons remained in the custody, unnecessarily for a longer period.

(ii) It was alleged that, these persons were falsely implicated in this case. Read the report submitted by Investigation Wing of the Commission. From the report submitted by ACP (Crimes), it is seen that, all these accused persons were arrested only because the complainant in his report, given the names of the persons, of having taken part in the commission of offence. **Secondly**, Manjunath Harigopal Shetty, who claims to be an eye witness of this incident, also stated the same. Therefore, from the police report, it has become clear that, the police arrested these persons, because the complaint mentioned names of all these persons. In such circumstances, it cannot be said that, police unnecessarily arrested these persons. According to the complainant their prosecution was malicious. In that case, all these four persons whose names are written in the complaint,



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can very well sue the complainant for damages / compensation for malicious prosecution.

(iii) News appeared in 'The Times of India' on 05.05.2006 with head lines "4 Youths wrongly held for murder." As all these persons were discharged by the Court in view of the application made by police under Sec. 169 Cr Pc, there is reason to believe that and it presupposes that, there was no case against them, which can stand at trial. It was the defence taken by police that, only because the complainant mentioned the names of all these persons in the First Information Report, about their taking active part in the Commission of an offence, they were arrested etc. It was incumbent upon Respondent Police, to move the said application for discharge u/s 169 Cr PC as early as possible and within a reasonable time from the date of such knowledge. Because of the delay, these persons unnecessarily remained inside the Jail. All such aspects cannot be ignored. Secondly, it is necessary to impress upon the mind of Respondent, proper care must be taken and it must be seen that, no such unpleasant incident is repeated in future. I therefore, feel it is necessary to make following recommendations to the Respondent in view of the provisions of Sec. 18 of the Protection of Human Rights Act, 1993.

- 1. To appoint a Senior Police Officer to find out whether really there was delay in moving the application for discharge u/s 169 Cr PC and if so,**



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what are the reasons for the same. If there is no sufficient reason for delay, then action needs to be taken against the official at fault, according to law.

2. To ascertain whether any action can be taken against the original complainant, Faim Usman Shaikh in view of his affidavit dated 24.04.2006, for having given such report in police and if so, to take action according to law.
3. Copy of this order be sent to Addl Commissioner of Police (Crimes), Pune City, Pune for information and necessary action, as per the recommendations made above and compliance be reported.
4. The copy of this order be sent through Secretary, Maharashtra State Human Rights Commission, Mumbai.

With these recommendations the Case No. 59/23/2006-07 is disposed of accordingly.

Dated : 5 January 2009



V G Munshi
(Justice V G Munshi)
Member, SHRC