



MAHARASHTRA STATE HUMAN RIGHTS COMMISSION

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SHRC/VGM/12/2009/ 3875
Date: 22 December 2009

Case No. - 9/35/2006-07 with 2849/2007-08

Name of the Complainant : Nandkishore P Bhagat &
Raju Ramaji Bhagat
Kanergaon Naka,
Dist Hingoli.

Vs.
The Superintendent of Police
Hingoli.

Date : 17 December 2009

Coram : Justice V G Munshi, Member

ORDER

Read the allegations made in the complaint and report received from the Superintendent of Police, Hingoli. Read the report received from Special Inspector General of Police of Investigation Wing of the Commission.

2. Before proceeding with the merits of the case, points to be decided etc. it is necessary to acquaint ourselves with the facts and circumstances of the case with which we are concerned.

Complainant Raju Ramaji Bhagat (Case No. 2849/2007-08) is resident of village Kumergaon Naka, Tal Hingoli. Complainant Nandkishore Pandurang Bhagat (Case No. 9/35/2006-07) is his Uncle. They both did file present complaints in respect of incident dated 21.06.2006 and claimed suitable action in this matter. Therefore, both these cases are heard and decided together by common order.



3. The complainants reside on the given address. They did construct temporary shed on the land belonging to Government. The complainant already moved Tahsildar, Hingoli, for allotment of land to the complainant. The Respondents and other persons of the village Kanergaon and other persons of the village Kanergaon did not like this. That on 19.06.2006 Gautam Bhise, Fakira and some other persons at about 8.00 a.m. in the morning made attack on the shed of the complainant, damaged the structure and household articles, and given threats to the complainant. The complainant lodged report in the Police Station on 19.06.2006. However, Police did not take any action. Again that on 21.06.2006 Gautam Bhise, Madhukar Salunkhe, Dattatray Sakunkhe, Nirmala Salunkhe and some other villagers at about 7.00 a.m. in the morning made attack on the house of the complainant. They set the house on fire and thus, destroyed the household articles and damaged the structure. The complainant on the same day i.e. on 21.06.2006 went in Police Station Goregaon to lodge report. However, Police did not take any action in this matter. Even complaints were made to Superintendent of Police, Hingoli and Collector, Hingoli. As no action was taken the complainant moved the Commission for necessary action in this matter.

4. The Respondent Superintendent of Police, Hingoli by filing their report denied and disputed all the allegations made in the complaint. According to them they made proper investigation in this matter. There was no evidence to show that these persons really set the said house on fire. Lastly, the complainant failed to establish his title or ownership over the shed in dispute. In short according to the Respondent no offence as alleged ever taken place and present complaint was made with malafide intention and motive and only to pressurize the Police.

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

- (i) In the report it is mentioned that during investigation it was transpired that no house, land or structure stood in the name of the complainant, and accordingly they have taken dakhala from Gram Panchayat. Complainant Raju Ramaji Bhagar that on 16.01.2006 written one application to Tehsildar, Tehsil Office, Hingoli. According to him he then occupied the disputed site fully described in application for last 4-5 years. He requested the Tehsildar to allot him this land and he showed



willingness to pay all the charges etc. It shows that the land where structure stands does not belong to the complainant but it is a gaonthan land of the Government. According to the Respondents the complainant made encroachment on Government land, erected structure. The Gram Panchayat wanted to remove the structure and also the encroachment. In other words, according to the Respondents the complainant illegally occupied this site by erecting structure. Even though it is assumed for a while that the complainant made encroachment and erected structure, he cannot be evicted otherwise than due course of law. The record shows that structure, on the given date of incident was in possession of complainant when it was set on fire. He can legitimately lodge complaint in Police Station and it was incumbent upon Police to take cognizance of such offence. In other words, competent Civil Court alone can decide whether the possession of complainant over structure was illegal or he was an encroacher, and not the Respondent Police. The Police view^{ed} the case through wrong angle and did not register the offence.

- (ii) The complainant that on 19.06.2006 lodged complaint in Police Station making allegations that Respondents made attack on his house on 19.06.2006 in morning and damaged house / structure and household articles etc. However, Police did not take any cognizance of this complaint. That on 21.06.2006 the Respondents set the house of the complainant on fire and he again lodged complaint in Police Station on the same date. The Police did not take any action. When the complainant made complaint, making allegations of happening of a cognizable offence under section 436 of IPC, it was incumbent upon Respondent Police to register First Information Report. Section 154 of Cr PC is reproduced as under

Sec 154 Cr PC

“(1) Every information relating to the commission of a cognizable offence if given orally to an officer-in-charge of a Police Station, shall be reduced to writing by him or under direction and”



Thus, it was incumbent upon Station Officer to record FIR. The Police is bound to register the information received of commission of cognizable offence unless the information is vague, incomplete. In the present case Police assigned reason for not registering the offence and it was that the complaint was false. It is not known how Police jumped to the conclusion, that the complaint was false. It has come in the Report that Police did investigation, examined witnesses and then came to the conclusion that complaint was false. It shows that Police did investigation in this case, without registering the offence. It is not known how investigation was made without registering offence. There is no scope for doubt that in this matter the Police did not act properly and according to law. Allegations were made that Police joined hands with other side etc. It was incumbent upon Police to register offence. If no offence was made out, they could send proposal for grant of summary accordingly, to the Court. In that case the Court could decide whether the complaint was false or whether there was no sufficient evidence etc. The approach of Police was wrong. It caused great injustice to the complainant. There was no reason to refuse registration of F.I.R. Therefore, the complainant was unnecessarily required to move Collector, Superintendent of Police and other Authorities.

In view of this situation, I feel it just and proper to make following recommendations.

- (A) Superintendent of Police, Hingoli to register offence in respect of incident dated 21.06.2006, and to investigate the offence and to take action according to law and compliance may be reported.
- (B) Copy of this complaint be sent to Superintendent of Police, Hingoli through Secretary - State Human Rights Commission, Mumbai for information and necessary action at early date.

With these observations and recommendations Case No. 9/35/2006-07 and Case No. 2849/2007-08 are disposed of accordingly.



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