

MAHARASHTRA STATE HUMAN RIGHTS COMMISSION
Administrative Staff College Compound, 9, Hazarimal Somani Marg, Opp. C.S.T.(VT), Mumbai- 400 001.

Telephone Number : 2207 3434 Fax : 2207 3434
Website : <http://mshrc.maharashtra.gov.in>

SHRC/VGM/07/2009/ 2163

Case No. – 15/26/2005

Name of the Complainant : Prof Sukumar Dattu Kamble
Aalte, Vasant Nagar, Yashwant Nagar
Kupwad, Sangli.

Vs.

The Superintendent of Police
Sangli

Date : 1 July 2009

Coram : Justice V G Munshi, Member

ORDER

Read the allegations made in the complaint and report submitted by Superintendent of Police, Sangli. Read the case papers. Heard the parties.

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 brought on record.

Complainant Sukumar Dattu Kamble is resident of village Aalte, Dist Sangli. During relevant time he did work as lecturer in local College and resided in Sangli along with his wife and children. The complainant comes from a very poor and backward family. Even then he completed his education and got the degree of MA and BEd. The complainant is social worker and he is President of Democratic Party of



India. The said Sanghtana is actively working for the welfare and benefit of persons of lower class. The complainant says that he contested the election of Vidhan Sabha and Lok Sabha. In short according to the complainant he did social work and no criminal case was then pending against him anywhere.

That on 24.01.2005 one Maria Mallappa Bhandare was admitted in the hospital of Dr. Sharad Sawant and she was taking treatment for burn injuries. There arose a dispute about the bill of the hospital between Mallappa Bhandare and Dr. Sawant. Mallappa Bhandare made one complaint to Superintendent of Police, Sangli on 24.02.2005 mentioning that Dr. Sawant forcibly taken amount of Rs. 35,000/- from him, abused him making reference of his caste and he was confined in the room. Mallappa Bhandari given copy of this complaint to the complainant Sukumar Kamble. Accordingly on 24.02.2005 Press Conference was arranged in the matter of Mallappa Bhandare. It was alleged that Dr. Sawant and other persons forcibly taken away Mallappa Bhandare, taken his signature on stamp papers. Therefore, the Press Conference was cancelled.

It was alleged by the complainant that he was not anyway concerned with Mallappa Bhandare or Milind Inamdar. It was alleged that Dr Sawant, Sanjay Patil and Dilip Chougule - Police Inspector, Police Station Vishram Baugh falsely implicated him in criminal case. Offence at crime No. 36/2005 u/s. 384, 506, 34 of IPC was registered against the complainant and other persons. They were arrested and they were produced before the Court and were remanded in Magisterial Custody. Later on they were released on bail.

It was further alleged by the complainant that PI Chougule again falsely implicated him in criminal case in Crime No.7/2005 u/s 384, 388, 389, 506 r/w Sec. 34 of IPC. In short according to the complainant he was falsely implicated by all these persons in different



R/R,HRG -RECOMM.

extortion cases, though he did not take part in the commission of those offences.

In the last according to the complainant PI Dilip Chougule hand cuffed him and taken him through the streets in a procession during investigation and while taking to the Court etc. According to the complainant he being a educated person and when there was no reason to handcuff him, he was deliberately handcuffed while taking to the Court. Therefore, by filing present complaint he prayed for action against Dr Sharad Sawant and against PI Dilip Chougule.

3. Superintendent of Police, Sangli by filing their report denied and disputed all the allegations made in the complaint, According to them criminal cases of extortion are filed against the complainant and the cases are pending in the Court. In the last according to them the complainant did make present complaint with malafide intention and motive and to obstruct the Police from taking any action against the complainant. PI Dilip Shripatao Chougule by filing his affidavit also denied and disputed all the allegations of illegal arrest, detention, handcuffing etc made in the complaint. According to him, the complainant was produced before Judicial Magistrate, Sangli on two occasions. He did not make any complaint of ill-treatment etc. In short according to him therefore, all the allegations made in the complaint cannot be believed and accepted.

4. Therefore it is necessary to view the case of the complainant in the light of facts and circumstances brought on record and also in the light of legal position.

- (i) The complainant appeared before Commission and did file an affidavit in support of his case. The complainant did file on record copies of documents, photographs in order to substantiate his case. From the photographs placed on record it is seen that the complainant has taken active part in social work.



(ii) The complainant did not face any criminal trial or any offence was not registered against him. In such circumstances it cannot be said that before happening of this incident the complainant was of criminal mentality etc. Therefore, we have to view the case on this background.

(iii) The complainant claimed action against Dr Sharad Sawant. Section 12 (a) of the Protection of Human Rights Act, 1993 is reproduced as under.

**"The Commission shall perform all or any of the following functions namely,
(a) inquire suo motu or on a petition presented to it by a victim or any person on his behalf (or on a direction or order of any Court) into complaint of-
(i) violation of human rights or abatement thereof or
(ii) negligence in prevention of such violation by a public servant"**

It was further pointed out that the expression "public servant" has been defined in Section 2(m) of the Act of 1993 and it reads as under,

'Public servant shall have meaning assigned to it in Sec. 21 of the Indian Penal Code.'

A careful reading of the definition of 'public servant' in Section - 21 of IPC shows that the Respondent cannot be said to be a public servant'. Therefore, in view of the bar under clause 8(f) of Maharashtra State Human Rights Commission (Procedure) Regulations, 2001 r/w. Sec.10 of Protection of Human Rights Act, 1993, the



Commission cannot entertain such complaint, because allegations are not made against public servant.

High Court, Madras in

2005 INDLAW MAD 259

Santosh Hospitals Private Limited

Vs.

State Human Rights Commission

Tamil Nadu and Others

In similar set of circumstances it was held that,

"Human Rights Act deals with violation of Human Rights by a public servant and not others – Petitioner is surely not a public servant and hence the Human Rights Act will not apply at all."

In view of the principle laid down in above referred decision, the position of law is now very clear and the Commission cannot entertain and decide such matter.

- (iv) It was alleged by the complainant that PI Chougule falsely implicated him in criminal case at the instance of Dr. Sharad Sawant. It is necessary to mention that police after completing investigation did file charge sheet against the complainant and other persons in the Court and the matter is subjudice. In such circumstances, all these aspects that the complainant was falsely implicated in these cases etc can be considered and decided by the Court where criminal cases are pending and not by the Commission. In other words when the matters are subjudice before competent Court it will not be proper on the part of the



Commission to go so deep into the merits of the case and to record findings and observations on the merits of the case that too without jurisdiction.

(v) The complainant by filling affidavit, on oath stated that PI Chougule handcuffed him while taking him to the Court etc. PI Chougule by filing his affidavit denied and disputed the same. The complainant has filed on record photographs and the news papers cuttings. Photographs show that he was really handcuffed, he was taken through the streets to the Court. The documentary evidence placed on record in form of photographs is sufficient to establish that, the complainant was really handcuffed by the Police, while he was taken to the Court from Police Station through streets.

(vi) Now the next question arises in this matter is whether PI Chougule was justified in handcuffing the complainant while he was taken to the Court. PI Chougule in his affidavit mentions that sometimes considering the aspect of security and fear of absconding, the accused person is handcuffed, when he is taken for the investigation. Now the burden affirmatively lies upon PI Chougule to establish that the circumstances of the case demanded, the handcuffing of the complainant and he was justified in handcuffing the complainant. In the present case during relevant time the complainant was working as a lecturer in the College. **Secondly**, he was president of Sanghtana and he was busy in doing social work and his record was clean. **Thirdly**, it has not come on record that, the complainant protested or resisted his arrest. Therefore, PI Chougule had no reason to put handcuffs. The apprehension of the complainant's absconding or security problem, are baseless.



(vii) If PI Chougule wanted to put handcuffs he should have recorded reasons accordingly and should have brought this fact to the knowledge of the Magistrate at the time of remand. The omission to do all these things show that PI Chougule failed in his duties and did put the handcuffs, with malafide intention and motive, and to defend the complainant in the society. Attempt was made to show that, the complainant did not make any complaint of ill treatment before Magistrate. When the complainant did not receive any ill treatment, he was justified in not making such complaint before Magistrate. Only because the complainant did not make complaint of handcuffing, it does not mean that the act of PI Chougule of putting handcuffs, was proper or legal. Now there is no scope for doubt that PI Chougule was wrong in putting handcuffs and was also guilty of violation of fundamental rights of under trial prisoner under the Article - 21 of the Constitution of India.

(viii) It was argued by the Learned Counsel for the complainant that PI Chougule and the Police staff by putting handcuffs violated the human rights of the complainant and in support of his contention the Ld Counsel relied on the decision given by the Apex Court reported in

1990 (3) Supreme Court Cases 119

Sunil Gupta & Ors.

Vs.

State of Madhya Pradesh & Ors.

It was held that,

“When a person is remanded by a judicial order by a competent Court, that person comes within the judicial custody of the Court, and taking of that person from a prison to the Court or back from Court to the prison by



the escort party is only under the judicial orders of the court. Even if extreme circumstances necessitate the escort party to bind the prisoners in fetters, the escort party should record the reasons for doing so in writing and intimate the Court so that the Court considering the circumstances either approves or disapproves the action of the escort party and issues necessary directions. In the present case the petitioners were educated persons and social workers. They staged a 'dharna' for a public cause and voluntarily submitted themselves for arrest. They even refused to come out on bail but chose to continue in prison for the public cause. They had thus no tendency to escape. Even assuming that they obstructed public servants in discharge of the public functions during the 'dharna' or raised any slogan insidier or outside the Court, that would not be sufficient cause to handcuff them. Further, there was no reason for handcuffing them while taking them to Court from jail. They had been subjected to humiliation by being handcuffed which act of the escort party is against all norms of decency and which is in utter violation of the principle underlying Article 21. So the conduct of the escort party in arbitrarily and unreasonably humiliating the citizens of the country with the obvious motive of pleasing 'someone' is strongly condemned. Since the escort party without any justification had handcuffed the petitioners on both occasions i.e. when taking the petitioners from the prison to the Court and then from the Court to the prison, the State Government is unjustly and unreasonably handcuffing the petitioners"



Now there is no scope for doubt that PI Chougule and other police officials put handcuffs and taken the complainant through streets and that too without any justification. The circumstances of the case are sufficient to initiate departmental Inquiry against these Police Officials and to take action according to law. Therefore, I make following recommendations in this matter.

- (1) **Superintendent of Police, Sangli either himself or through Sr. Police Officer in the District make inquiry in respect of handcuffing the complainant Sukumar Kambale in view of the observations made in the order and to take action according to law.**
- (2) **Copy of this order be sent to Superintendent of Police, Sangli through Secretary, MSHRC, Mumbai for information and necessary action. Compliance be reported.**

With these observations and recommendations Case No. 15/26/2005 is disposed of accordingly.

Dated : 1 July 2009



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