

MAHARASHTRA STATE HUMAN RIGHTS COMMISSION

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SHRC/VGM/10/2009/ 2956

Date: 29th October 2009

Case No. - 6/4/2005

Name of the Complainant : Vijay Ramsingh Jadhav
N-8, Navbharat Housing Society
Plot no. 5, CIDCO, Aurangabad

Vs.

The Commissioner of Police
Aurangabad

Date : 15 October 2009

Coram : Justice V G Munshi, Member

ORDER

Read the allegations made in the complaint and the report received from Commissioner of Police, Aurangabad. Read the report received from Investigation Wing of the Commission. Read the case papers. Heard the parties.

2. The important facts of the case of the complainant may be briefly stated as under.

The complainant Vijay Ramsingh Jadhav joined Indian Navy on 06.07.1984 and retired on 31.07.1999 after the completion of the bond period. In meantime he prepared himself for the post of PSI / STI. He appeared in MPSC competitive examination. MPSC vide their letter dated 05.11.2004 called the complainant for the interview to be taken place within short time.

3. The alleged incident taken place that on 09.11.2004 at about 5.00 p.m. when he and his brother Babu were present in their house.

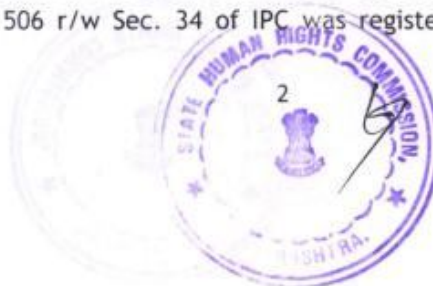


Respondent No.2 ASI G R Rathod along with one Police Constable came to their house. They wanted to take Bapu Jadhav to the Police Station Kranti Chowk. Complainant Vijay Jadhav opposed the same, saying that, reason for arrest was not disclosed. Therefore, the Police taken both the brothers to the Police Station and put them in the lock up. They manhandled them. They were not permitted to contact their relatives. Arrest was ^{not} intimated to their relatives nor their arrest was properly recorded in registers and Station Diary. They were produced before Magistrate for remand with handcuff. In the last it was alleged that they all were falsely implicated in criminal case. According to the complainant, the Police did not at all follow the guidelines given by Hon'ble Supreme Court in D K Basu's case and thus, violated their human rights. They made complaints to higher Authority. As they could not get relief, they moved the Commission for necessary action in this matter.

4. The Respondent Commissioner of Police, Aurangabad by filing their Report denied and disputed all the allegations made in the complaint. They denied all the allegations of ill treatment, wrongful arrest, detention etc on the part of Police. According to the Respondent Commissioner of Police, Aurangabad firstly, they properly followed the procedure at the time of arrest, detention etc. Secondly, after completing investigation charge sheet was filed in Court and the matter is subjudice before the Court. Thirdly, when the complainant was produced before Magistrate at the time of remand, he did not make any complaint of ill treatment, hand cuffing, illegal arrest etc. Lastly, present complaint was made with malafide intention and motive and to pressurize the Police. In short according to the Respondent the Police, have taken proper action in this matter.

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

- (i) Before proceeding with the merits of the case it is necessary to acquaint ourselves with the facts of the case with which we are concerned. That on 09.11.2004 one Shamalbai Vijay Kumar Gosavi (Tenant) did file complaint in Police Station Kranti Chowk that the landlord Ramsingh Jadhav and his sons, at about 9.00 to 10.00 a.m. in morning, illegally entered in her house and raised quarrel and made dispute of unpaid electric charges. They beaten her and given her threats. Therefore, offence at Cr. No. 301/2004 under Sec. 452, 323, 504, 506 r/w Sec. 34 of IPC was registered against them. They were



R/R,HRG - RECOMM.

arrested and produced before Magistrate. After completing investigation charge sheet (No. 234/2004) was filed in Court on 30.11.2004 and criminal case No. 1591/2004 is pending in Court. On this background we have to view the case of the complainant.

(ii) It was alleged by the complainant that he was manhandled by the Police, he was kept without food, he was produced before Magistrate with handcuff, etc. It is necessary to mention that they all were produced before Magistrate on 10.10.2004. It was submitted that at the time of remand the complainant did not make any complaint of ill treatment etc. Even copy of charge sheet was given to the complainant that on 01.12.2004. Even at that time he did not make any complaint and given his signature in token of receipt of charge sheet. The Xerox copy of remand order shows that complainant did not make complaint of ill treatment etc. In such circumstances, the case of the complainant of ill treatment etc cannot be believed and accepted. Had it been the fact that there was ill treatment etc to the complainant, he must have stated the same before Magistrate. Omission to make such statement of ill treatment before Magistrate, indicates that the case of the complainant is not true and therefore, cannot be believed and accepted.

(iii) Respondents PI Chate, ASI G R Rathod and PC G D Golar did file their affidavits in reply and on oath denied and disputed all the allegations made in the complaint.

(a) That at about 9.45 p.m. ASI Rathod did send PC Sayed Akbar (B.No. 1736) to the house of sister of complainant to inform them about arrest. Entry was taken in station diary dated 09.11.2004. In meantime this matter was handed over to the Investigation Wing of the Commission. They personally inspected the Police Station record. The Report mentions that this entry No.52 dated 09.11.2004. It shows that information about arrest was given to the relatives of the complainant.

(b) The Arrest Register shows that complainant Vijay and his brother Babu were arrested on 09.11.2004 at about 6.30 p.m.



and its entries were taken at Sr.No. 1645 and 1646 respectively.

- (c) The extract of lock up Register (dated 09.11.2004) shows that after arrest they both were kept in lock up. ASI Rathod in his sworn statement stated that he had given food to these brothers and then taken them to Police Station. The report of Investigation Wing Shows that as per entry from Bhatta Register it is seen that on 10.11.2004 food was given to the brothers. In such circumstances, it will be wrong to hold that food was not given to these brothers.
- (d) The entry made in Station Diary dated 10.11.2004 shows that the Ramsingh Harisingh were arrested at about 2.00 p.m. and he was sent to Court for remand along with other two accused. Thus, all these accused were produced before Magistrate well within 24 hours from the time of their arrest.
- (e) It was incumbent upon the Station Officer to send the accused persons for their medical examination immediately after their arrest. There is no record to show that these persons were really sent for medical examination. It shows that they were not at all medically examined after their arrest. Thus, the Respondents did not properly follow the directions / guidelines given by the Apex Court in D K Basu's case. Thus, these rights of the complainant were violated by these Respondents. Therefore, it is necessary to hold proper inquiry about such omission and disobedience of the directions given by Hon'ble Supreme Court.

- (iv) It was alleged by the complainant that his name did not appear in fist complaint lodged in Police Station and even then he was illegally arrested and falsely implicated in a criminal case. In this matter charge sheet is already filed and the matter is subjudice before the competent Court. The Court where criminal case is pending alone can deal and decide whether accused was falsely implicated in criminal case etc. In other words, it will not be proper on the part of the Commission to go so deep in to the merits of the case and to record



findings or order on its merits when the matter is sub-judice before the competent Court in view of clause 8 (h) of the Maharashtra State Human Rights Commission (Procedure) Regulations, 2001 r/w Sec. 10 of the Protection of Human Rights Act, 1993. Therefore, I see no reason to grant compensation etc.

(v)

6. In view of this situation and legal position, the case is disposed of with these observations and recommendations.

(A) The Commissioner of Police, Aurangabad to initiate Departmental Inquiry in this matter against the persons at fault as to why the complainant Vijay Ramsingh Jadhav was not referred for his medical examination after his arrest and why such entry was not taken in Police Station record and why the directions / guidelines given by the Hon'ble Supreme Court in D K Basu's case were not followed and to take action according to law and report the compliance.

(B) Copy of this order be sent to the Commissioner of Police, Aurangabad through Secretary - Maharashtra State Human Rights Commission, Mumbai for information and necessary action according to law at early date.

With these observations and recommendations Case No. 6/4/2005 is disposed of accordingly.



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