

MAHARASHTRA STATE HUMAN RIGHTS COMMISSION

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SHRC/VGM/07/2009/ 2188

Division Bench
Case No. – 16/25/2005

Name of the Complainant : 1. Shri Kedar Shrikrishna Joshi
2. Shri Vinayak Janardan Limaye
3. Shri Madhav Vinayak Limaye
All r/o. 3140, Tilak Aali,
Ratnagiri – 415 612

Vs.

1. The Superintendent of Police
Ratnagiri.
2. Shri Umesh Shetye – then President
Municipal Council
3. The Chief Executive Officer
Municipal Council
4. Police Inspector
Ratnagiri City Police Station, Ratnagiri

Date : 20 July 2009

Coram : **Justice V G Munshi, Member**
Shri Subhash Lalla, Member

ORDER

Read the averments made in the complaint and reply filed by the Respondents. 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, with which we are concerned.



The complainants are residents of Ratnagiri. The house property and shop, fully described in complainant are of the ownership of complainant Vinayak Janardan Limaye and his son Madhav Vinayak Limaye. This property was then looked after by care taker Kedar Joshi. The complainants made following allegations against the Respondents in their complaint.

- (i) That on 9th July 2005, care taker Kedar Joshi was alone present in the house and shop. President of Nagar Parishad, Ratnagiri and other persons forcibly entered in these premises, removed keys of shop and house, from the pocket of clothes of care taker Kedar Joshi, and beaten him. The Police registered NC case and did not take any action.
- (ii) That on 12.07.2005, the officials of Respondent Nagar Parishad again entered on their private property, they forcibly removed wooden furniture and other articles, which were lying in these private premises. They by using the keys opened the gate of the compound and acted illegally and against the provisions of law.
- (iii) The Respondents with the help of Police and other persons falsely implicated them in a criminal case.
- (iv) Lastly, it was alleged that, Police Inspector, Police Station Ratnagiri and Superintendent of Police Ratnagiri should have taken cognizance of their complaints and should have registered offence against the wrong doers.

The complainants by filing present complaint therefore, moved the Commission for necessary action in this matter.

3. Respondent Superintendent of Police, Ratnagiri by filing their reply submitted that, on the basis of complaint given by Kedar Joshi in Police Station on 09.07.2005 NC No. 691/2005 under section 323 read with Sec. 34 of IPC was registered and the complainant was directed to approach the Court for further action. It was further submitted that, Police Officer from Police Station Ratnagiri, made inquiry in all the other several complaints made in Police Station and did dispose of them, as no offence was



made out in those matters. In short according to them Police have taken proper action in this matter.

4. Respondent Nagar Parishad, Ratnagiri by filing their reply denied and disputed all the allegations made in the complaint on several grounds.

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

(i) It was alleged by the complainants that, the Respondents falsely implicated them in criminal case in respect of incident dated 08.07.2009. Complainant Nalini Sudhakar Bolwalkar that on 09.07.2005 lodged complaint in Police Station Ratnagiri City against complainants Kedar Joshi and Madhav Limaye and offence at Cr. No. 118/2005 under Sections 452, 430,337,323, 504, 506, 290 read with Sec 34 of IPC was registered in Police Station. It was alleged that these complainants that on 08.07.2009 illegally entered in the house of complainant Nalini Bolwalkar, abused her, threatened her to cause harm to her person and forcibly obtained her signatures on blank papers etc. According to the complainants they neither entered in the house of complainant Nalini Bolwalkar, nor did abused or threatened her. They denied and disputed all other allegations. The Investigating Officer after completing investigation did file charge sheet against them in the Court. Therefore, all these aspects that they were falsely implicated in this case are to be heard and decided by the Court where criminal case is pending and not by the Commission. In other words, it will not be proper on the part of the Commission to enter so deep into the merits of the case and to record observations or findings in this matter, when similar matter is pending before competent Court in view of clause 8 (h) of the Maharashtra State Human Rights Commission (Procedure)



R/R,HRG-RECOMM.

Regulations, 2001 r/w Sec. 10 of the Protection of Human Rights Act, 1993. The complainants can very well take all these defences before the Court at the time of trial. The complainants have filed on record copy of judgment passed by the Judicial Magistrate (FC), Ratnagiri in Criminal Case No. 176/2005. It shows that both these complainants were prosecuted before the Court. It further shows that trial of complainant (Accused No.1) Kedar Joshi was separated, he was put on trial and acquitted of all the charges framed against him. The complainant (Accused No.2) Madhav Limaye trial is pending. Thus, the Court of competent jurisdiction passed the order. Therefore, the Commission cannot deal and decide the same matter afresh in view of the provisions clause 8 (i) of the Maharashtra State Human Rights Commission (Procedure) Regulations, 2001 r/w Sec. 10 of the Protection of Human Rights Act, 1993.

- (ii) It was alleged that on 12.07.2005 the officials of Respondents Nagar Parishad without any authority entered on the premises of the complainant, illegally removed wooden furniture and other articles from the private property of the complainant, and thereby caused damage to these articles and they acted arbitrarily and contrary to the law etc. The Respondent naturally denied and disputed the same. According to them they have taken this action at the instance of residents of that locality and that too strictly in accordance with the provisions of law. It is the fact that the Respondent on the given date time and place removed the articles from the premises of the complainants. The reply of the Respondent shows that on 07.05.2005 the residents of Tilak Aali made one complaint in Nagar Parishad. It was alleged that, the complainants stored old furniture, door frames and other articles, including old four wheeler and thereby created obstacle to the way, for the children and other persons. It became a



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place for serpents etc to hide and it created danger to the life of the persons passing by that road. According to the Respondent therefore, the residents of that area apprehended danger to their life. The Respondent thought that it was a nuisances and therefore taken action as per the provisions of Maharashtra Nagar Parishad, Nagar Panchayat, and Industrial City Act, 1965, It mentions that notice was issued under Section 229 of the Act of 1965, articles were removed, panchnama was drawn etc. According to the Respondent the Parishad has got all the powers to take such action for the removal of the nuisance. On the other hand according to the complainants the action of the Nagar Parishad is illegal, arbitrary, malicious etc. According to them notice was illegal and it was not issued in accordance with the provisions of the Act of 1965. The legality, propriety or correctness of the notice or the action there under cannot be challenged or disputed before Commission. If the complainants feel aggrieved by the said action, then they should avail proper remedy. In other words, it is beyond the scope of powers and jurisdiction of the Commission to deal and decide such issues.

The question arises in this matter is whether Commission has jurisdiction to entertain, deal and decide such issue. Section 12 of the Protection of Human Rights Act,1993 deals with functions and powers of the Commission. The relevant portion of Sec. 12 (a) (i) of the Act of 1993 is reproduced as under.

Sec. 12 (a) (i)

"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 into complaint of (i) violation of human rights or abatement thereof...."



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Therefore, the complainant has to make out a case of violation of human rights, in view of the meaning assigned to the definition of "human rights" given under Sec. 2 (1) (d) with Sec.12 (a) (i) of the Act of 1993.

The Division Bench of High Court Bombay in

A I R 2006 Bombay 44,

(State of Maharashtra Vs Sou Shobha Vitthal Kolte)

held that,

"Once a petitioner comes before Commission complaining of violation of human rights based on the right created under a statute and the statute itself provides a mechanism for redressal by way of appeal, revision or otherwise, the Commission ordinarily should not entertain a complaint and direct the parties to pursue their remedy under the statute."

In view of the principle laid down in the decision referred to above, the complainant has to pursue proper remedy. The Commission cannot entertain such matter.

- (iii) The complainant Kedar Joshi on 09.07.2005 did lodge report in Police Station making allegations against President of Nagar Parishad. The Police registered NC case No. 691/2005 in this matter. The complainant did file M.L.C. Certificate which mentions about the injuries. It was alleged by the complainant that, the keys were forcible removed from the pocket etc. and therefore, the Police should have registered the offence. Sec. 155(2) of Cr PC mentions about investigation to be made in non-cognizable cases and the provision is reproduced as under.

Section 155 (2)




"No Police Officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial."

Taking into consideration all the circumstances of the case we feel that investigation is necessary in this NC case. For that purpose permission of the Magistrate is necessary in view of Sect. 155 (2) of Cr PC.


In such circumstances, we think it proper and just to make following recommendations.

- (A) **Police Inspector – Police Station Ratnagiri City to move the Magistrate and to seek necessary permission under Section 155(2) Cr PC for investigation in NC case No. 691/2005 and to take action according to law.**
- (B) **Copy of this order be sent to Superintendent of Police, Ratnagiri for information and necessary action according to law.**
- (C) **Copy be sent through Secretary Maharashtra State Human Rights Commission, Mumbai.**

With these observations and recommendations Case No. 16/25/2005 is disposed of accordingly.


(Subhash Lalla)
Member, SHRC




(Justice V G Munshi)
Member, SHRC

Dated: 20 July 2009