

# 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://msbrc.maharashtra.gov.in>

SHRC/VGM/09/2009/ 2584

Date: 10 September 2009

## Review Application No. 12/2005 in Case No. 3197/04-05 and Case No. -3197/2004-05 with Case No. 3796/2005

Name of the Complainant : Sujata Shinde  
R/o. Vijayshree, Pooja Estate  
Azad Nagar, Mira-Bhayendar, Thane

Vs.

The Superintendent of Police  
Thane (Rural)

The Medical Officer  
Bhayendar Primary Health Centre  
Thane

The Superintendent  
Kalyan District Prison, Kalyan

The Commissioner of Police  
Thane.

Date : 1 September 2009

Coram : Justice V G Munshi, Member

## **ORDER**

Read the averments made in the complaint and report received from the Superintendent of Police, Thane (Rural). Read the case papers. Read the report given by Investigation Wing of the Commission. 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 of the case, with which we are concerned.

The complainant is resident of Azad Nagar, Mira Bhayendar Road (East), Thane. That on 20.10.2004 residents of that area found dead body of one Janardhan Ghangale. In respect of murder of Janardhan Ghangale, Police registered offence against complainant and her family members, merely on suspicion. In fact complainant and the other residents of that area, had gone in Police Station for



giving information about this murder. It was alleged by the complainant that the Police abused and beaten them.

The complainant made following allegations against Police.

- (i) That the Police beaten all these persons and tried to take out information in respect of this murder.
- (ii) Investigating Officer S B Taley and lady Police Constable present in Police Station beaten her, though complainant informed them, that she was carrying pregnancy of four months.
- (iii) The Police arrested them at about 10.00 p.m.
- (iv) That on 21.10.2004 the Police taken the complainant for medical examination and the Doctor given report that she was then carrying pregnancy.
- (v) On the same day they were produced before Magistrate. The Police threaten the complainant not to open the mouth before Court.
- (vi) The Court granted Police Custody to these persons for 14 days. During this period of Police Custody, Police continuously beaten the complainant and her relatives Rajashree and Vishaka.
- (vii) Though it was told to Investigating Officer Taley that complainant was pregnant, he did not listen to them and continued ill treatment. The complainant was getting pains in abdomen and even then she was not taken to Doctor.
- (viii) That on 02.11.2004 at about 12.00 p.m. Police again tortured and ill treated her. Investigating Officer Taley threatened to cause harm to the life and person of her husband and his brothers, if she did complain about ill treatment before Court. Therefore, she tolerated the ill treatment.
- (ix) Since 04.11.2004 she was given medical treatment by the medical officer of the prison. That treatment was not sufficient.
- (x) As the complainant was getting pains, she was given medical treatment in Government Hospital Ulhasnagar.
- (xi) In the last it was alleged that the abortion taken place, because of beating given by the Investigating Officer.

Therefore, she moved the Commission for necessary action in this matter.



R/R, HRG - RECOMM.



3. The Respondent Superintendent of Police, Thane (Rural) by filing their reply denied and disputed all the allegations made in the complaint. According to them present complaint was made with malafide intention and motive and to obstruct the Police from making investigation in murder case, which was registered against them.

4. Therefore, it is necessary to view the case in the light of facts and circumstances brought on record and also in the light of medical, medico legal and documentary evidence adduced on record.

(i) The complainant earlier filed similar case No. 3197/2004-05 before Commission claiming same relief. The Bench (Coram - Justice A D Mane Acting Chairperson) that on 17.02.2005 did pass order and it is reproduced as under.

**“Perused the complaint. The complaint be transmitted to the Commissioner of Police, Thane for disposal at his end. With this direction the case is disposed of.”**

The complainant being displeased with the said order did file Review Application No. 12/2005 on the grounds mentioned in the said application.

There cannot be any difference of opinion on the point that, the earlier Bench, who passed the order, should have heard and decided the Review Application, arising out of said order, instead of keeping the matter pending for such a long period. In view of Regulation 27 (b) of the Maharashtra State Human Rights Commission (Procedure) Regulations, 2001 it was incumbent upon the said Bench to decide, the Review Application by passing suitable order and it is reproduced as under.

**Regulation 27 (b)**

**“If any application seeking review or modification of the order or proceedings passed by the Commission is received, it shall be placed before same Bench, which passed the order, along with the case file and it shall be disposed of by such order, as may be deemed proper.”**

It will not be proper on the part of this Bench, to find out or highlight the reasons, for not passing orders, on Review Application, by



R/C/HRG - RECOMM.

the earlier Bench, and for keeping the matter pending for such a long period. In meantime the member of the earlier Bench retired. Thereafter matter was fixed for hearing before this Bench.

The present Review Application is moved challenging the order passed by the Bench, under the provisions of the Protection of Human Rights Act, 1993 and it is governed by the Regulations, called as "The Maharashtra State Human Rights Commission (Procedure) Regulations, 2001. Regulation 27, speaks about Review and it is reproduced as under.

**Regulation 27 (Review)**

- (a) No party shall have a right to seek review of the order or proceedings of the Commission.

The word "shall" used in the above clause expresses a command. It shows that no such right is given to the party to seek review of the order.

Review Application can be entertained in view of the provisions of Code of Civil Procedure. The provisions of Sec. 114 and Order XL VII of CPC deal with the subject of Review. Under Clause (a) (b) and (c) of Sec. 114 and Order 47 Rule 1 of CPC review is permissible only in those contingencies mentioned in those clauses.

The order passed in Case No. 3197/2004-05 was not passed on the merits of the case and therefore, it can be reviewed taking into consideration facts and circumstances of the present case. Therefore, in the interest of the justice and in order to give another chance to the complainant ~~and~~ to substantiate her <sup>case</sup> the Review Application No. 12/2005 is allowed, the order dated 17.02.2005 passed in Case No. 3197/2004-05 is called back and the case No. 3197/2004-05 is restored to the file on its original number. The case No. 3197/2004-05 is considered on its own merits along with the another similar subsequent case No. 3796/2004-05 filed by the complainant on same grounds.

- (ii) Deceased Janardan Baburao Ghangale started school. The Report shows that Ravi Shinde and his brothers illegally constructed huts on that land. The deceased made complaint in Mahanagar Palika Mira-Bhayendar about this encroachment and it was removed by the



R/R.HRG - RECOMM.



Corporation. The Members of Shinde family again constructed huts on the same plot and the deceased again made complaint in Mahanagar Palika. Again notice was given to the encroachers by Mahanagar Palika. In Police report it is mentioned that therefore, the complainant and her family members got annoyed and made a conspiracy and killed Janardan Ghangule by making attack with the help of sticks, stones and sharp weapons. On the basis of the complaint given by wife of the deceased on 21.10.2004, in Police Station Mira Road offence at Cr. No. 336/2004 under Sec. 302, 147, 148, 149, 120 (B) r/w. Sec. 37 (1) and 135 of Bombay Prohibition Act, was registered against all these persons. The complainant, her husband, his brothers and other relatives were arrested by Police on 21.10.2004 and all other formalities were completed. On this background we have to view the case of the complainant.

- (iii) It was alleged by the complainant that she, her husband and her other relatives were falsely implicated in this criminal case of murder. All these aspects that they were falsely implicated in criminal case etc are to be heard and decided by the Court, competent to heard and decide this matter and not by the Commission. In other words, it will not be proper on the part of Commission, to go so deep into the merits of the case and to record findings or order, on its merits and that too without jurisdiction. The complainant can very well take all these defences before the Court, where criminal case is pending, at the time of trial.
- (iv) It was alleged by the complainant, firstly, Police arrested her on 21.10.2005, secondly, at the time of arrest she was carrying pregnancy of four months. Thirdly, on 21.10.2004 and on 02.11.2004 she was beaten by Investigating Officer, and she did not make complaint of ill treatment before Magistrate because of threats <sup>were</sup> given by Investigating Officer. Lastly, abortion taken place because of beating and harassment given to her by Police.
- (v) The Respondent Superintendent of Police, Thane by filing their report / reply denied and disputed all these things, mainly on the grounds that firstly, present complaint was made with mala fide intention and motive and to pressurize the Police from taking action



R/R,HRG - RECOMM.

against them. **Secondly**, the complainant did not make any such complaint of ill treatment either before Court at the time of remand or before Medical Officer at the time of medical examination. **Thirdly**, as per the say of the complainant abortion taken place when she was inmate of Jail.

(vi) In the given circumstances, the questions arise for considerations are **firstly**, whether the complainant was pregnant at the time of arrest. **Secondly**, whether she was beaten and ill treated by the Investigating Officer. **Lastly**, whether abortion taken place because of such harassment.

(vii) The report of Medical Officer dated 21.10.2004 shows that, the complainant was then carrying pregnancy of four months. The Report of Respondent also mentions the same thing. It shows that the complainant was then pregnant and carried pregnancy of four month. The report mentions about injuries on the person of the complainant. The complainant that on 16.11.2004 while she was in Jail, made a complaint that she was getting pains in her abdomen and there had been abortion about 8 days before. She was thereafter examined by several Doctors and every time she did tell different date / day of the abortion. From the material on record one thing has become clear that the complainant got abortion anytime after her arrest on 21.10.2004. Moreover, the complainant never made any complaint or grievance of any type against Jail Officer. In other words, she did not anyway hold the Jail Officers responsible for the abortion. It is her case that the abortion taken place, only because of beating or harassment given by Police while she was in Police Custody. Admittedly complainant was then in Police Custody and later on she suffered abortion and these are the circumstances against Police. Attempt was made to show that no such ill-treatment was given to the complainant. According to the Respondent, had it been the fact that, the woman was ill-treated by Police, she must have made such complaint before Court or Medical Officer. According to the complainant, she did not make complaint before Court or Doctor, only because the Investigating Officer given her threats, to kill her husband, who was co-accused in that crime, in a encounter. In the given circumstances there is every possibility that the



R/R,HRG - RECOMM.



complainant due to fear etc might have not stated all these things before Police.

(viii) It is necessary to mention that in this crime all the members of the family of complainant including female members were arrested on suspicion and they were kept behind the bars. It is a fact that the complainant was then carrying pregnancy of four months and the Investigating Officer was aware of all these things. It was incumbent upon the Officer, in these circumstances, to give her such treatment, which is given to a pregnant woman, after arrest.

(ix) There is a prima facie case for initiating inquiry against the persons at fault. I see no reason to agree with the report given by the Investigation Wing of the Commission. Therefore, I think it just and proper to make recommendations of proper and thorough inquiry in this matter, by a competent Authority. Therefore, in view of Sec. 18 of the Protection of Human Rights Act, 1993, I proceed to make following recommendations.

(A) The Commissioner of Police, Thane either himself or through Senior Police Officer, to make thorough inquiry into the allegations of cruelty, torture etc at the hands of Police, to the complainant, in view of the observations made in the order and to take action, if any, according to law and compliance be reported.

(B) Copy of this order be sent to the Commissioner of Police, Thane through Secretary, State Human Rights Commission, Mumbai for necessary action.

Review Application No. 12/2005 in Case No. 3197/2004-05 and Case No. 3197/2004-05 and Case No. 3796/2004-05 are disposed of accordingly.



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