

MAS/Case No.– 2780/2017

Name of the Complainant : Sachin P Ankushrao
Hari Om Residency, Flat No.10, Isbavi,
Tal. Pandharpur, Dist.- Solapur

Name of Respondent : The Superintendent of Police,
Solapur

Shri. Keshav Vabale
Asst Police Inspector
Lonikand Police Station, Pune
Thru Superintendent of Police
Pune (Rural)

Dr. Ramesh Khatavkar
Khatavkar Hospital
Patrakar Nagar
Bhakti Marg,
Pandharpur, Solapur – 413 304

Dr. A Y Joshi
Medical Officer
Thru Civil Surgeon
Civil Hospital, Solapur

Date : **1st April 2021**

Coram : **M. A. Sayeed, Acting Chairperson / Member**

ORDER

After having bestowed my anxious consideration to the merits of the rival contentions and the governing principles of Protection of Human Rights, the only issue which arise for my consideration is whether a case justifying intervention by the Commission has been made out by the complainant? For an effective adjudication of this crucial issue, reflection on the factual background of the controversy is necessary. In fact the complaint is comprising of two specific incidents, involving alleged Police torture to the relatives of the complainant. The first incident is of the year

2013 while the second incident is of the subsequent years and in fact the victims of these incidents as mentioned above are cousins of the complainant. I would like to first highlight on the first incident of year 2013.

Complainant's cousin Mr. Akash Chandrakant Nehatrao is alleged to be falsely implicated by the then Officer of Pandharpur Police Station in Cr. No. 56/2013 and alleged to have subjected him and other co-accused Mr. Amit Mane to custodial torture of which a cognizance was taken by the Court, on the strength of the complaint of ill treatment by them. The detail of the incident in question are set out in the complaint and though controverted by the concerned Police, but deserves to be discarded at the threshold for the simple reason that a judicial cognizance is taken by the Court and in fact a direction was issued by the Principal District Judge Solapur to the concerned Magistrate to take appropriate legal action against the culprits. During the course of the inquiry the Commission on 12.04.2019 was pleased to take note of all these important developments and issued show cause notices to the concerned Police Officer, API Shri. Wable, Gondiya and also with the concerned Medical Officer Shri. Khataukar and Shri. Joshi for having manipulated the medical record of the injured victims. In compliance of the aforesaid directions, explanations by the concerned Police and Medical Officers came to be submitted at Ex. H and J, disowning the accusations leveled against them.

A very unfortunate and shocking development in the present inquiry is the glaring laxity on the part of the concerned Judicial Authority for having failed to take appropriate action against the erring Police Officer as after much persuasion by this Commission, the Ld. Principal District Judge, Solapur vide confidential communication Ex K, conveyed that the entire record of the aforesaid crime No. 56/2013 was forwarded to the office of

the concerned Magistrate and he for the reasons best known to him did not take further action and in fact disobeyed the directions of the superiors. Not only this, but even the entire original record of the case went missing. The Ld. Principal District Judge was pleased to order an inquiry in the matter and after receipt of the report of the inquiry officer, Ld. District Judge IV, Solapur fixed the responsibility on the then erring judicial officer Shri. A K Kale. It was further informed that the supervisory authority i.e. office of the Registrar General, High Court of Judicature at Bombay was accordingly, informed about the alleged lapse and misconduct on the part of the concerned officer. The confidential report Ex K is kept in a sealed envelope along with the record.

Be that as it may, fact remains on record that victim Mr. Akash Chandrakant Nehatrao was subjected to custodial torture as admittedly, the orders and directions of the Court in that behalf were never assailed or challenged by the concerned erring Police Officer. In fact missing of the record from the custody of the Court itself appears to be a mystery and does create a suspicion about the entire episode. In spite of such unfortunate developments, one fact which clearly emerges on record is that victim Mr. Akash Chandrakant Nehatrao was the victim of the Police torture. Now this brings me to briefly discuss the law on the issue as elaborated by Supreme Court in re: Karan Sing (2013) 12 SC Cases 529 is reproduced in verbatim as under

Re – Karan Sing (2013) 12 SC Cases 529, holding that right to life & personal liberty vis-à-vis investigation cannot be deprived without following procedure prescribed by law – a defective tented investigation definitely leads to miscarriage of justice depriving a man of his fundamental rights guaranteed under Article 21 of the Constitution of

India. Observation made in para 16 to 19 & 21 are relevant for our purpose & reproduced in verbatim as under:

16. The investigation into a criminal offence must be free from any objectionable features or infirmities which may give rise to an apprehension in the mind of the complainant or the accused, that investigation was not fair and may have been carried out with some ulterior motive. The investigating officer must not indulge in any kind of mischief, or cause harassment either to the complainant or to the accused. His conduct must be entirely impartial and must dispel any suspicion regarding the genuineness of the investigation. The investigating officer, “is not merely present to strengthen the case of the prosecution with evidence that will enable the court to record a conviction, but to bring out the real unvarnished version of the truth”. Ethical conduct on the part of the investigating agency is absolutely essential, and there must be scope for any allegation of mala fides or bias. Words like “personal liberty” contained in Article 21 of the Constitution of India provide for the widest amplitude, covering all kinds of rights particularly, the right to personal liberty of the citizens of India, and a person cannot be deprived of the same without following the procedure prescribed by law. In this way, the investigating agencies are the guardians of the liberty of innocent citizens. Therefore, a duty is cast upon the investigating officer to ensure that an innocent person should not suffer from unnecessary harassment of false implication, however, at the same time, an accused person must not be given undue leverage. An investigation cannot be interfered with or influenced even by the courts. Therefore, the investigating agency must avoid entirely any kind of extraneous influence, and investigation must

be carried out with equal alacrity and fairness irrespective of the status of the accused or the complainant, as a tainted investigation definitely leads to the miscarriage of criminal justice, and thus deprives a man of his fundamental rights guaranteed under Article 21 of the Constitution. Thus, every investigation must be judicious, fair, transparent and expeditious to ensure compliance with the rules of law, as is required under Articles 19,20 and 21 of the Constitution. (Vide Babubhai v. State of Gujarat)

17. In Ram Bihari Yadav v. State of Bihar this Court observed, that if primacy is given to a designed or negligent investigation, or to the omissions or lapses created as a result of a faulty investigation, the faith and confidence of the people would be shaken not only in the law enforcing agency, but also in the administration of justice. A similar view has been reiterated by this Court in Amar Singh v. Balwinder Singh.

19. Omissions made on the part of the investigating officer, where the prosecution succeeds in proving its case beyond any reasonable doubt by way of adducing evidence, particularly that of eyewitnesses and other witnesses, would not be fatal to the case of the prosecution, for the reason that every discrepancy present in the investigation does not weigh upon the court to the extent that it necessarily results in the acquittal of the accused, unless it is proved that the investigation was held in such manner that it is dubbed as “a dishonest or guided investigation” which will exonerate the accused.

21. This Court in Dayal Singh v State of Uttaranchal has laid down certain norms for taking stern action against an investigating officer, guilty of dereliction of duty or misconduct in

conducting investigation, and held that the state is bound to initiate disciplinary proceedings against such officers even ignoring the Law of limitations, and even if such officer has retired.

At the same time liberty is being taken to refer to the meaning & interpretation of the word “harass – injury in In P. Ramanatha Aiyar’s Law Lexicon, 2nd Edn., the term “harass” has been defined thus: “Harass.—‘Injure’ and ‘injury’ are words having numerous and comprehensive popular meanings, as well as having a legal import. A line may be drawn between these words and the word ‘harass’, excluding the latter from being comprehended within the word ‘injure’ or ‘injury’. The synonyms of ‘harass’ are: to weary, tire, perplex, distress tease, vex, molest, trouble, disturb. They all have relation to mental annoyance, and a troubling of the spirit.” The term “harassment” in its connotative expanse includes torment and vexation. The term “torture” also engulfs the concept of torment. The word “torture” in its denotative concept includes mental and psychological harassment. The accused in custody can be put under tremendous psychological pressure by cruel, inhuman and degrading treatment.” 26. In the said case, emphasizing on dignity, it has been observed:- “.....The majesty of law protects the dignity of a citizen in a society governed by law. It cannot be forgotten that the welfare State is governed by the rule of law which has paramountcy. It has been said by Edward Biggon “the laws of a nation form the most instructive portion of its history”. The Constitution as the organic law of the land has unfolded itself in a manifold manner like a living organism in the various decisions of the court about the rights of a person under Article 21 of the Constitution of India. When citizenry rights are

sometimes dashed against and pushed back by the members of City Halls, there has to be a rebound and when the rebound takes place, Article 21 of the Constitution springs up to action as a protector....”

Applying the above noted principles to the facts at hand, I have no hesitation to hold that API Shri. Wable, deserves to be held liable for violating the human rights of the victim Mr. Akash Chandrakant Nehatrao. The explanation Ex H by API Shri. Wable is very casual and nowhere sounds plausible as a tactful silence is maintained over the action taken by the Judicial Forum, viz taking cognizance of complaint of ill treatment. Of course, with the concerned Magistrate having failed to take further action, despite specific direction by his Superior is nothing but a gross misconduct on his part, which resulted into miscarriage of justice. But the solace to the victim is some kind of relief being granted by this Commission as evidently, his honour and dignity has been infringed by an officer supposed to be custodian of law. Medical Officers have also played a dubious role by issuing two Medical Certificate, but with the Magistrate having take care to rectify their error by getting a proper medical certificate on record, and the reasons put forth on record by the concerned Medical Officer vide Ex J, no action against them is warranted.

Therefore, complainant's grievance in respect of the incident of year 2013 deserves to be accepted and considered by the Commission. And necessary recommendations in that behalf would be made in operative part of the order.

Turning to the other part of the grievance of the complainant about his other cousin Shri. Gopal Ankushrao being subjected to harassment and humiliation by the members of Law Enforcing Agency, because of his

political affiliation and being member of Nagar Parishad does not sustain ground legally and factually as consistent averments in the Police reports, as well as the discreet inquiry report Ex L submitted by the Investigating Wing of this Commission, it can be seen that right from the year 2008 onwards Shri. Gopal Ankushrao has been involved in serious offences like murder, attempt to murder etc. as reflected from the information in tabular chart in the reports Ex A and L. In fact in the year 2018, he has been again charged of having committed murder under FIR No. 244/2018. Most of the cases registered against him are subjudice before the Court and in fact he went underground to evade arrest by the Police and therefore, was apprehended at a later stage. He is reported to have approached Supreme Court for his bail and later on apprehended by the Police. All these factors taken together negatives complainant's allegations of biased and vindictive action by the Police. With the matters subjudice before the Court, his cousin – Shri. Gopal Ankushrao, has every liberty and privilege of agitating the issues in defence during course of trial, before the Court.

Foregoing discussions, thus, leads to an irresistible conclusions, that the complaint deserves to be considered partly, so far as allegations of custodial torture to victim Mr. Akash Chandrakant Nehatrao are concerned, but the allegations of false implications and harassment to victim Shri. Gopal Ankushrao to be discarded at the threshold. Accordingly, following order is passed.

ORDER

Complaint stands allowed partly. API Shri. Keshav Wable presently attached with Lonikand Police Station, Pune is held liable for having violated the human rights of the victim Shri. Akash Chandrakant Nehatrao and accordingly called upon to pay a compensation of Rs. 1,00,000/- (Rupees One Lacs Only) to him within six weeks from the date of recommendation of this order.

The SP, Pune is directed to consider launching of disciplinary action against API Shri. Keshav Wable if permissible under the Rules.

Compliance of the above noted recommendations, be made by SP, Pune under supervision and control of Spl IGP, Kolhapur Range, in accordance with the procedure u/s. 18 (e) of the Protection of Human Rights Act, 1993 r/w. Regulation 22 to 24 of the Maharashtra State Human Rights Commission, (Procedure), Regulations, 2011.

Copy of the order to be forwarded to the office of the Addl Chief Secretary, Home Department Mantralaya, Mumbai for necessary information.

Office of the Ld. Secretary attached with this Commission to take necessary follow up action.

**(M. A. Sayeed)
Acting Chairperson / Member**