

This proceeding was initiated on the complaint of one Sunaina Devi of village Hathsganj P.S. Hajipur district Vaishali. She claims to be a fruit vendor selling fruits on footpath in the town of Hajipur. As per her complaint, on 28.5.2008 at 12:30 PM Traffic Havaladar Shri Lakshman Yadav purchased 200 litchis from her at Gandhi Chowk. She demanded the price @Rs.40 per 100 litchis. Lakshman Yadav made derogatory remarks casting reflection on her modesty and tried to take away the litchis without paying the price, The footpath vendors protested. However, showing off his position as police officer he carried the litchis without paying the price. A delegation of footpath vendors went to SP (Vaishali)'s office to complain against the officer but the SP was not available in the office and they returned. On coming to know about this, Shri Lakshman Yadav got a case (Hajipur P.S. Case No. 289/08) under sections 341, 323, 337, 504, 353, 379/34 IPC instituted in the evening in collusion with the Hajipur Town P.S. against the complainant, her son, relative Naresh Sah and others. The complainant was arrested but released on bail. On 9.11.2008 Naresh Sah was arrested even though he was unwell (suffering from jaundice) and confined to bed. The family members requested the police to release him on P.R. bond assuring that he would appear in court after recovering from illness but they did not heed to their remonstrations. Naresh Sah was also assaulted while being forcibly taken away. He died on 11.11.2008. The complainant alleged that he was not given proper treatment and as a matter of fact cruelly treated as a result of which he died. The complainant also alleged that the dead body was not cremated according to Hindu rites and it was thrown in the river.

The complaint was received in the office of the Commission on 26.12.2008 and on 30.12.2008 report was called from SP Vaishali and IG Prisons. SP Vaishali sent report based on report received from the police station after about seven months on 19.7.2009. The report stated that Traffic Havaladar Lakshman Yadav was posted on traffic duty at Gandhi Chowk on the date of incident. At about 12:30 there was traffic jam and he asked the footpath vendors to remove their thela/baskets etc. in response to which complainant Sunaina Devi, Naresh Sah, Dharmendra Kumar and 15-20 unknown started assaulting Lakshman Yadav. On shout police constables on traffic duty rushed to the spot and rescued him. In course of the assault they tore off the uniform of Lakshman Yadav and Dharmendra Sah snatched his wrist watch. Lakshman Yadav lodged report with respect to the incident on the basis of which Town P.S. Case No. 289/08 was registered against the complainant, her son Darmendra and Naresh Sah and they were arrested and sent to jail. Lakshman Yadav was not present at the time of arrest. While in jail Naresh Sah fell sick

and he was treated at the jail hospital. He was later referred to Sadar Hospital for better treatment but he died on the way. After his death, intimation was sent to the family members who came to the hospital and created raucous. However, the administration got order restored and after the post mortem handed over the dead body to them. Sadar UD Case No. 12/08 has been registered regarding the death of Naresh Yadav and enquiry was going on.

IG Prisons also sent a report on 5.8.2009 wherein he stated that Naresh Sah was admitted to Hajipur Jail in connection with the Town P.S. Case No. 289/08 on 9.11.2008. On 11.11.2008 he complained of stomachache, fever and restlessness and was taken to jail hospital. He was admitted to the jail hospital and treated by the jail doctor. On 30.11.2008 at 10AM his condition suddenly started deteriorating and on the advice of the jail doctor he was referred to the Sadar Hospital Hajipur for better treatment where he died. The intimation of death was duly given to the family members by the Jail Superintendent vide letter no. 1902 dated 13.11.2008. Vide letter no 1904 the Jail Superintendent also directed the Officer-in-Charge Town P.S. to inform the family members about his death. The dead body was handed over to Avinash Kumar for cremation. The report also stated that at the time of inquest no sign of injury was found on the body of the deceased Naresh Sah and the cause of death was illness (amoebic peritonitis). The magisterial enquiry also concluded that the cause of death was ailment in the bowels.

The Commission considered the above said reports. In its order dated 15.10.2009 the Commission observed that the report of SP Vaishali does not address the issue involved. The Commission pointed out that the thrust of complaint was that Traffic Havaldar Lakshman Yadav purchased the litchis but he was not willing to pay the price, he rather made derogatory remarks. This led to protest by the vendors and out of annoyance and to create his defence he lodged a false case and got the complainant and Naresh Sah arrested even though the latter was unwell and confined to bed. As per the allegation, Naresh Sah was not given proper treatment and he succumbed to his illness, and his dead body was thrown in the river. The Commission observed that while the latter part of the complaint (regarding treatment meted out to Naresh Sah) related to the jail administration, SP Vaishali was expected to make an objective and independent enquiry as regards the first part of the complaint viz conduct of Lakshman Yadav. Instead of making enquiry himself SP had relied on the enquiry made at the police station level. The Commission observed that the local police normally is not expected to make an objective enquiry and submit a damning report. SP was directed to make a personal independent enquiry and submit fresh report.

On 20.11.2009 SP Vaishali sent another report. Instead of making enquiry himself, as directed by the Commission, he this time got enquiry made by Dy.SP (Headquarters) Hajipur. The report was more or less on the same lines as the previous one to fastening the blame on the complainant and other footpath vendors.

Not satisfied with the report, observing that the Officer namely SP Vaishali had failed to appreciate the sensitivity of the issue and make a proper enquiry addressing the grievance of the applicant, the Commission directed Inspector General of Police attached with the Commission Dr. A.K. Seth IPS to make investigation and submit report. Pursuant to the said direction Dr. Seth went to Hajipur on 27.1.2010 and made local enquiry in course of which he examined a number of witnesses including complainant Sunaina Devi and Traffic Havaladar Lakshman Yadav. Some of the witnesses stated about the occurrence of 25.8.2008. Others spoke about forcible taking away of Naresh Sah. He also looked into the police and the jail records and examined the Jail Superintendent.

On consideration of the oral and documentary evidence, the IG rejected the police version that the occurrence was a result of anti encroachment measure – observing that had this been the cause, the case would have been instituted against other footpath vendors too who were selling fruits at the place. The case, however, was instituted only against the complainant Sunaina Devi and her family members. The IG did not find any ground to disbelieve the complaint version that when the complainant demanded the price of litchis Lakshman Yadav made derogatory remarks on her modesty and tried to forcibly take away the litchis without paying the price which led to protest. While commenting upon the delay in filing the case (P.S. Case No. 289/08), the IG observed that Lakshman Yadav lodged the case after coming to know that a group of footpath vendors had gone to SP's office for making complaint against his conduct. In other words the police case was lodged in order to make out a defence for the possible action against him. If the occurrence had taken place in the manner alleged in the FIR, the case should have been lodged immediately after the incident and not after six hours.

As regards the second part of the complaint relating to the In-custody death of Naresh Sah the IG took the view that there were lapses in providing treatment. He noticed that as per the post mortem report Naresh Sah was suffering from jaundice, his liver was enlarged and had pus; his spleen was also found to be enlarged. The fact that he was suffering from jaundice was mentioned in the jail records and therefore he should have been sent to the Sadar Hospital for treatment at the time of his admission in the jail. The then

Superintendent of Hajipur Jail and the Jail Doctors were also responsible for his death. Had they shown proper and due concern and diligence and got him treated on time, perhaps, Naresh Sah could be saved. As a matter of fact, according to the IG, considering his physical condition the police should have made request to the CJM at the time of his production seeking direction for his proper treatment in the hospital. The Officer-in-Charge Town P.S. therefore was also at fault.

The IG, however, held that the other allegation that the dead body was thrown in the river was not substantiated. He found that as per the jail records, the body had been handed over to one Avinash Kumar and therefore this part of this complaint was not proved.

To recapitulate, the case of the complainant is that the Traffic Havaladar Lakshman Yadav purchased 200 litchis from her and when she demanded the price, made derogatory remarks casting reflection on her modesty and finally forcibly took away the litchis without paying the price. Later in the evening he filed a false case against the complainant and her family members and got them arrested. The derogatory remark, to be precise, was whether the complainant had included (in the price demand by her) her own price. Surely, no woman could tolerate this and the protest by her and the fellow vendors to such a comment was quite natural and spontaneous. The protest by the footpath vendors however apparently had no impact and undeterred, in a blatant show of uniform and police powers, he took away the litchis without paying the price. As found by the IG Dr. Seth when he later came to know that a group of footpath vendors had gone in delegation to the SP for lodging the complaint against him, he filed the case in the evening after six hours – prima facie to create a defence qua possible action against him. It is unfortunate that the fact which was so patently clear escaped the consideration of SP Vaishali or, perhaps, he conveniently chose the turn a blind eye. There is a growing tendency to protect subordinates against whom allegation is made which if I may say so is one of the major causes of growing indiscipline and corruption. The senior officer no doubt must protect his subordinate against unfounded, frivolous and tendentious allegation but at the same time he should not defend his subordinate when he is found to be at fault. The manner in which the SP Vaishali got the enquiry held – firstly at the P.S. level and then at the level of the Dy.SP - without showing any regard to the directive of the Commission to make a personal enquiry, must be deprecated.

Coming to the complaint, as per the report of Dr. Seth three things stand proved – viz the (mis)conduct of Traffic Havaladar Lakshman Yadav, arrest

of Naresh Yadav even though he was sick and confined to bed, and finally negligence in providing him proper medical treatment.

In the facts and circumstances of the case, the Commission is satisfied that a case of violation of human rights of the complainant as well as Naresh Sah is made out. 'Human rights' has been defined in the Protection of Human Rights Act to mean the rights relating to life, liberty, equality and dignity of the individual. Besides other overt acts committed by Lakshman Yadav such as forcibly taking away of litchis without paying the price, showing off police powers, filing false case leading to arrest of the complaint and others including Naresh Sah who finally succumbed to his ailments, he (Lakshman Yadav) made derogatory remark impinging on the modesty and therefore dignity of the complainant. Having regard to the ailments of Naresh Sah – considering the nature of the allegations against him it was hardly necessary to arrest him and if at all the police in their wisdom arrested him, he should have been taken to hospital for proper treatment. As found by the IG Dr. Seth, had due care and caution been taken, his life could be saved. It is reported that he has left behind minor children including daughters to fend for themselves. It is a fit case in which they should be compensated.

Section 18 of the Act empowers the Commission – where the enquiry discloses commission of violation of human rights or negligence in the prevention of violation of human rights – payment of compensation to the complainant or the victim or the members of his family and initiation of proceeding for prosecution or such other suitable action as the Commission may deem fit against the concerned person or persons.

It is clear that Traffic Havaladar Lakshman Yadav was the prime mover – the villain of the piece – of the entire occurrence. Therefore it is a fit case in which disciplinary proceeding should be initiated against him after placing him under suspension so that he does not influence the course of the proceeding. Officials such as the Jail Doctor/Superintendent, the Officer-in-Charge of Town P.S. who effected the arrest of Naresh Sah, also contributed to the death of Naresh Sah and therefore committed violation of human rights. It is fit case in which suitable action is taken against them after enquiry.

As observed above, on account of in-custody death of Naresh Sah and his family members ought to be compensated. In the facts and circumstances, the Commission directs that a sum of Rs. two lakhs be paid to the next of kin within six weeks. Sum of Rs.20,000 be also paid to the complainant Sunaina Devi for the indignity heaped on her by Lakshman Yadav and the amount be recovered from his salary.

The Commission would like to express anguish over the casual and insensitive approach of the then SP Vaishali for his failure to make/cause proper enquiry and take suitable action.

Compliance report be submitted within eight weeks.

Let copy of this order be sent to the Principal Secretary, Department of Home, Director General of Police, Bihar, IG Prisons Bihar and SP Vaishali for information and suitable action at their respective end. The complainant be also informed of the order.

Justice S.N. Jha
Chairperson