

**BIHAR HUMAN RIGHTS COMMISSION**  
**9, Bailey Road, Patna – 15**

File No **BHRC/COMP.** 2861/10

Case of **YUGAL MOCHI**

---

This is third case – in sequence – from Patna district of a person being arrested in the same very case despite his acquittal in the case and remaining in jail as an under-trial prisoner – for as long as about 15 months in the instant case. Facts of the case briefly are that applicant Yugal Mochi son of Arjun Mochi, resident of village Banauli within Paliganj P.S. of Patna district, was an accused in Paliganj P.S. Case No.96/90 relating to murder of a co-villager. After submission of charge sheet, trial registered as Sessions Trial No.470/91 was held in which the applicant was acquitted of the charge in course of time on 10.7.2003 by the Additional Sessions Judge (Fast Track court – I) Patna. It now appears – from the report of the District & Sessions Judge Patna – that on the basis of ‘supplementary report’ another Sessions Trial being ST No.606/93 was registered against the applicant in which he was granted bail by the Patna High Court but he absconded and permanent warrant of arrest was issued against him. In purported execution of the said permanent warrant the applicant was arrested on 27.5.2009. He remained in jail until 30.8.2010 when he was released pursuant to ‘discharge’ order passed by Additional Sessions Judge Danapur (to whom the case file had been transferred in the meantime).

In its earlier order dated 1.7.2011 the Commission observed that “the case prima facie is a reflection on the administration of criminal justice system. Having been acquitted in the case, it is beyond comprehension that the accused would be re-arrested and made to remain in jail as an under-trial for another spell of 15 months”. Before proceeding further, the Commission sought a factual report from the District & Sessions Judge Patna as to the circumstances in which (i) Sessions Trial No.606/93 was registered with respect to the same case i.e. Paliganj P.S. Case No.96/90 (ii) Permanent warrant of arrest was issued against the applicant which led to his arrest (iii) applicant’s plea that he had already been acquitted in the case was not heard until 30.8.2010. The District & Sessions Judge, Patna has submitted report dated 26.8.2011. He has also enclosed copy of the report of the 2<sup>nd</sup> Additional Sessions Judge, Danapur in the matter.

In the reports it has inter alia been stated that Paliganj P.S. Case No.96/90 was committed to the Court of Sessions and registered as Sessions Trial No. 470/91. So far as applicant Yugal Mochi is concerned; he was declared as absconder in the charge sheet. On his arrest and production in the court of ACJM

Danapur on 16.4.1993, on the basis of supplementary report, Sessions Trial No.606/93 was registered. Applicant was granted bail by the High Court but remained absent and was therefore declared as absconder and permanent warrant of arrest was issued against him. He was arrested on 27.5.2009 in execution of the said permanent warrant of arrest. On 30.8.2010, finally, he was released pursuant to discharge order of the Additional Sessions Judge, Danapur.

It would appear that the facts mentioned by the applicant and briefly narrated in the opening paragraph are not materially at variance with the facts stated and the sequence of events narrated in the report. There may no doubt be more than one trial against different accused of the same case and as the applicant was shown as absconder in the charge sheet, the trial was rightly split-up and separate trial was registered with respect to him on his arrest. The fact however remains that the applicant stood acquitted in the case. It is the admitted position that Sessions Trial No.470/91 and 606/93 pertained to and arose from the same case i.e. Paliganj P.S. Case No.96/90. The report does not advert to the fact that the applicant was acquitted in the case on 10.7.2003, and if that was so, how could he be re-arrested in the same very case. May be, that Sessions Trial No.606/93 was registered against the applicant and permanent warrant of arrest was issued against him but by reason of his acquittal – apparently in Sessions Trial No.470/91 on 10.7.2003 – the permanent warrant of arrest became infructuous and there was no question of its execution. Not only the arrest was void ab initio but his remand to judicial custody was also patently illegal.

The report states that the applicant did not inform the court about his acquittal in the case but it is difficult to accept the plea. If the applicant had really been produced before the Magistrate on his arrest on 27.5.2009 he would have certainly disclosed this fact. No person of even below average intelligence would refrain from divulging this fact. The Commission is inclined to think that either the applicant was not produced at all before the Magistrate and remand order was passed in absentia, in routine, or the concerned magistrate did not pay heed to his remonstrations. In either situation it was bad and unworthy of the Magistrate. Considering the level and manner at which the police functions especially in the lower hierarchy, it is not really surprising if for extraneous considerations the person is re-arrested in the same case in which he has been acquitted but it is shocking when he is remanded to judicial custody by a Judicial Magistrate.

The Commission notes with regret – as indicated at the very outset – that this is third case of its kind which has come to its notice in a short period of time. The Commission feels further anguished by the fact that although the matter was

reported to the Patna High Court, there is no report of any positive action being taken against the officers concerned.

Article 21 guarantees liberty to the citizens except "according to the procedure established by law". The permanent warrant of arrest against the applicant in connection with the Sessions Trial No.606/93 having been rendered infructuous in view of his acquittal on 10.7.2003, there was no question of its execution and therefore the arrest was totally unwarranted and illegal. The Commission cannot give back the period spent by the applicant in prison between 27.05.2009 and 30.8.2010 but for deprivation of his right to liberty, the applicant can be suitably compensated.

In normal course where identity of the persons/officials responsible for the violation of human rights of an individual is made known to the Commission, notice is issued to him as per section 16 of the Protection of Human Rights Act as to why amount of compensation may not be recovered from them. Where the identity is not known the Commission leaves it to the State Government to ascertain their identity, if it so likes, and recover the amount from them. It makes little difference if the person responsible for such violation of human right is a judicial officer but then the matter has to be left to the discretion of the High Court. But in any case the officials being agents of the state, the government cannot shirk its responsibility and liability to pay the compensation. It goes without saying that courts are also organs of the state and therefore where the violation occurs in course of administration of justice by the functionaries of the court, the state would be equally liable.

All said and done before saying the last word it would be appropriate and in tune with the rules of natural justice to give an opportunity to the State Government to take its stand, if it so likes, in the matter.

Accordingly, let notice issue to the Principal Secretary, Department of Home as to why suitable compensation be not awarded to the applicant. Show cause, if any, should be filed by 26.12.2011.

Matter may be taken up for further orders on 28.11.2011.

Date: 24.11.2011

Justice S.N. Jha  
Chairperson