

HUMAN RIGHTS COMMISSION
9, Bailey Road, Patna – 15

File No **BHRC/COMP.2146/10**

Case of **LAL BABU PRASAD**

Applicant Lal Babu Prasad – son of Dasai Bhagat, resident of village Jhigaha, P.S. Motipur, district Muzaffarpur – has approached this Commission for compensation for his wrongful detention in connection with Motipur P.S. Case No. 122/09, and suitable action against the then SHO Motipur P.S, S.I. Basudeo Das.

Brief facts of the case are that the applicant's co-villager Shiv Shankar Sahni allegedly committed murder of his wife for which a case was registered at Motipur P.S. Shri Basudeo Das allegedly tried to hush up the investigation in collusion with the accused which was reported to S.P. Muzaffarpur by the applicant on 15.4.2008. Getting annoyed, on 20.4.2008 he took the applicant to police station and put him in the lock-up. He was abused and assaulted there. Sum of Rs.16,425 in cash and wrist watch were forcibly taken on the pretext that after release from the lock-up the same will be returned. The applicant remained in the lockup for 6-7 hours but the money or watch were not returned. In stead, he was threatened not to make any complaint to the higher authorities. Later, the applicant was implicated in Motipur P.S. Case No.122/09 as a non-FIR accused even though on the date of occurrence (subject matter of that case) he was in the office of DGP at the Police Headquarters at Patna – which is evident from the official records of the Police Headquarters. The applicant was taken into custody in connection with the said case on 5.11.2009. He remained in custody for about four and a half months until 18.3.2010 when he was released on bail.

It is relevant to mention here that the higher officials who supervised the investigation found that applicant had been implicated without any basis. They also noted that the reputation of S.I. Basudeo Das was not good and there were reports of arbitrary and high-handed acts committed by him. With respect to the incident in question – on the recommendation of the officials who supervised the case, a departmental proceeding (No.17/10) was initiated against him in which he was found guilty and awarded punishment of deduction of an amount equivalent to six months annual increment from his pension, as he had retired in the meantime.

The Commission sought report from Sr.S.P. Muzaffarpur and later, on consideration of the report and the applicant's response, issued notice to S.I. Basudeo Das (retd.) in terms of section 16 of the Protection of Human Rights Act. He accordingly, appeared and filed his written defence and the matter was finally

heard on 14.12.2012 in his and applicant's presence. Sri Rashid Zaman, Dy.S.P. (Hqrs.) appeared on behalf of Sr.S.P. Muzaffarpur, besides the applicant.

The Commission has considered the written defence of S.I. Basudeo Das (retd.) and finds the same to be totally unsatisfactory. As a matter of fact, as mentioned above, he has already been found guilty in the same matter in the departmental proceeding and the only point for consideration is whether he should be saddled with further burden. It is clear that if applicant is entitled to any compensation, the burden of compensation in the ordinary course should be on him.

False implication of the applicant being proved, it follows that his detention was wrongful, unjustified and mala fide. It is to be mentioned that Motipur P.S. Case NO.122/09 was registered under sections 499, 402 IPC and sections 25(1B), 26 and 35 of the Arms Act. The applicant was taken into custody without any evidence and without any criminal antecedent (as per the police report itself) forcing a totally unwarranted incarceration for about four months. The punishment awarded in the departmental proceeding to the delinquent official can be of no solace to him. The Commission would accordingly award compensation which in the facts and circumstances is quantified at Rs. fifty thousand.

The point which then arises for consideration is whether compensation should be paid by the state or S.I. Basudeo Das (retd.). It is true that he acted as an agent/functionary of the state while taking the applicant in custody but the action being mala fide, attributable to the personal whim and malice of the official, it would not be proper to fasten the burden of compensation with the state. The Commission is therefore of the view that the burden of compensation should be on S.I. Basudeo Das (retd.). It is true that he was awarded punishment in the departmental proceeding but the punishment of recovery of a petty amount (equivalent to six months annual increment) was hardly commensurate with the misconduct. In any view, the claim and entitlement of the applicant for compensation stands on another footing, and if he is entitled to the same, S.I. Basudeo Das (retd.) must pay the same.

In the result, the Commission directs Sr.S.P. Muzaffarpur to recover sum of Rs. fifty thousand from the retiral dues of S.I. Basudeo Das (retd.) – the then SHO Motipur P.S. and pay the same to the applicant within a period of six weeks, and submit compliance report to this Commission.

Copy of this order may be sent to Sr.S.P. Muzaffarpur for compliance.

Copy may also be sent to S.I. Basudeo Das and applicant for information.

Date: 26.12.2012

Justice S.N. Jha
Chairperson