

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

File No **BHRC/COMP.** 2583/09

Case of **SATYENDRA SINGH**

Complaint of applicant Satyendra Singh broadly is in three parts.

As per the first part – on 23.09.2009 an incident of assault by Bhushan Kumar Singh (also Shashi Bhushan Kumar Singh) and his associates took place at new Jaganpura within Ram Krishna Nagar P.S. Applicant informed SHO Smt. Gauri Kumari about the incident on her mobile phone. Instead of taking action against the miscreants, the SHO leaked the information to Bhushan Kumar Singh who came to the applicant along with two unknown associates and threatened him. This incident was reported to the SDPO on his mobile phone who assured to take action but nothing was done and Bhushan Kumar Singh continued to threaten him.

As per the second part of the complaint, on 26.09.2009 S.I. R.P. Paswan of R.K. Nagar P.S. came to the applicant's house at 7:30 (in the morning), told him that he had been summoned by the SHO R.K. Nagar P.S. S.I. R.K. Paswan and took him to the other side of the bus stand at Mithapur where SHO S.I. Gauri Kumari was sitting in her Indica car. At that point of time the applicant received message on his mobile about snake bite of his nephew. He requested Gauri Kumari to let him go but was not permitted to leave. She demanded Rs.25,000 to settle the matter. In the circumstances, he could not take his nephew to hospital on time. Before he could reach PMCH, he died. According to the doctor had he been brought earlier, his life could be saved. As a result of the shock on account of his death, his sister suffered miscarriage and the applicant's sister-in-law (Bhabhi) lost balance of mind.

The third part of the complaint relates to arrest of the applicant on 04.10.2009.

Report was called from DIG Central Range and he submitted his report dated 28.04.2011. While disbelieving other parts of the complaint, the DIG held that the applicant was arrested without the order of any superior police officer which was suggestive of the arbitrary and whimsical style of functioning of S.I. R.P. Paswan and SHO S.I. Gauri Kumari for which explanation had been sought from them as to why departmental proceeding should not be initiated.

In view of the nature of the complaint and the findings of the DIG, notice was issued to S.I. Gauri Kumari and S.I. R.P. Paswan in terms of section 16 of

the Protection of Human Rights Act. Both of them filed their show-cause and the matter was finally heard on 06.06.2012.

Shri Ratnesh Kumar Singh Advocate appearing for Gauri Kumari and R.P. Paswan raised preliminary objection to the effect that the proceeding is time barred in view of the provisions of section 36(2) of the Protection of Human Rights Act. He submitted that section 36(2) prescribes limitation of one year from the date of incident; the incident having taken place in September-October 2009, the proceeding has become time barred with the passage of time. He relied on the decisions of the Supreme Court reported in 2004(2) PLJR 129(SC) and AIR 1999 SC 340.

From perusal of the file it appears that the application/complaint was filed on 18.12.2009. The complaint was marked to the Division Bench comprising of the Chairperson and Justice Rajendra Prasad, Member on 30.12.2009. After examination by the office it was put up before the Bench on 8.2.2012 when report was called from the DIG Central Range Patna. The Commission thus took cognizance of the complaint on 8.2.2009. Section 36(2) lays down that the Commission "shall not enquire into any matter after the expiry of one year from the date on which the act constituting the violation of human rights is alleged to have been committed". The Commission would observe that enquiry into the complaint commenced on 8.2.2010 when cognizance was taken and report was called for, and therefore the proceeding cannot be said to be time barred. There is no prescription in section 36(2) that the proceeding must be finally heard and disposed of within the period of one year. If it were so, most of the complaints/proceedings would be rendered time barred by delaying the submission of report or show-cause. It may be recalled that the DIG submitted his report on 28.04.2011, followed by issuance of notice to the alleged violators of human rights which is mandatory in terms of section 16 of the Act. They filed their show-cause on 9.5.2012. In the circumstances, the Commission does not find any substance in the preliminary objection about the proceeding being time barred.

Adverting to the merit, the first part of the complaint really does not involve any serious issue of human right violation. The only material thing as per the complaint is SHO Gauri Kumari being in collusion with Bhushan Kumar Singh did not register any case, and instead made this known to him that the applicant had given information about the incident; and the alleged threats by Bhushan Kumar Singh (Shashi Bhushan Kumar Singh). As regards the second part of the complaint it is relevant to mention that Shashi Bhushan Kumar Singh was admitted in the PMCH for injuries (which he had allegedly sustained at the hands of the applicant and others in the incident of 23.09.2009) on 24.09.2009. He

made fardbeyan statement on 26.09.2009 which was recorded by an A.S.I. of Pirbahore Police Station at 2 PM, making allegation against the applicant of assaulting him. Thus prior to 26.09.2009, to be precise 2 PM, there was no case or formal complaint against the applicant. As a matter of fact, FIR (Case No.100/09) was registered at Ram Krishna Police Station only on 01.09.2009 on receipt of the fardbeyan from Pirbahore P.S. Thus there was no occasion for SHO/S.I. Gauri Kumari and S.I. R.P. Paswan to summon the applicant to Mithapur bus stand and demand money for 'settling' the matter. The case of the applicant is that as he did not pay money, false case was got instituted against him. The allegation is far fetched, for it is difficult to visualise that after the alleged negotiation for payment of money failed in the morning, information was passed on to Shashi Bhushan Kumar Singh for lodging the case. He was in the PMCH since 24.09.2009 itself. Prima facie, it appears that after he was found fit for making statement, message/information would have been sent to Pirbahore P.S. (within whose territorial jurisdiction PMCH is situate) and an ASI was deputed for recording his statements which was done at 2 PM. In the circumstances, the Commission is satisfied that the second part of the complaint is not proved. It would not be out of place to mention that the applicant had filed court complaint with respect to the incident of 26.09.2009 being case no.2708c/09 in which witnesses were examined but the complaint was dismissed at the enquiry stage.

The third part of the complaint, as seen above, refers to the applicant's arrest on 04.10.2009. The DIG found the action of not only S.I. R.P. Paswan who was the I.O. of the case and had affected the arrest but also S.I. Gauri Kumari being the SHO to be amiss. It transpired in course of hearing that their explanation against proposed initiation of the departmental proceeding was accepted by Sr.S.P. Patna (approved by DIG Patna) and no departmental proceeding was initiated against them in the matter.

On the direction of the Commission copy of the explanation submitted by the officials was produced. Therein they took the stand that arrest was made after the case was found to be true and sufficient materials for submission of charge sheet were collected and, further, after 'discussions' with and on the direction of the Supervising Officer/Authority, Shri Ashok Kumar Sharma, Inspector of Police Punpun and SDPO Sadar Patna.

The Commission perused the case diary of R.K. Nagar P.S. Case No.100/09 and it transpired that after registering the case on 01.10.2009 S.I. R.P. Paswan took up the investigation and on the same day recorded the statements of three witnesses, besides the further statement of the informant, and inspected the place of occurrence. Having done that he closed the diary. No

investigation was made on 2.10.2009 or 3.10.2009. On 4.10.2009 also no investigation was made. At the end of the day at 9 PM he took the applicant in custody and thereafter recorded his statement in defence. It may not be out of place to mention that on 5.10.2009 applicant was produced before the Magistrate and remanded to judicial custody. He was released on bail on 8.10.2009.

The Commission observed that a plain reading of the case diary does not bear out the stand or plea of the officials in the aforesaid 'Explanation' that the case has been found to be true and that sufficient materials had been collected to justify submission of charge sheet. The investigation was far from complete and it ex facie appears to be an over-statement that sufficient materials had been collected by 4.10.2009 to justify submission of charge sheet – on the basis of the statements of three witnesses and inspection of the P.O. – without looking into the injury reports etc. in a case of assault. It is relevant to mention here that investigation in the case continued for well over three months until 23.01.2010 when charge sheet was submitted. In between, the Inspector of Police, Punpun submitted his supervision memo on 28.10.2009.

More importantly, there is nothing on record to show that any so called discussion took place between SHO/I.O. on the one hand and Shri Ashok Kumar Sharma, Inspector of Police, Punpun or SDPO Sadar Patna on the other hand. Also, no order or direction (for the applicant's arrest) said to have been passed by them has been brought on record. When this was pointed out to Gauri Kumari and R.P. Paswan they stated that the matter was discussed and direction was given on mobile. SDPO Shri Rashid Zaman, representing Sr.S.P. Patna stated that normally direction of the superior officer in the matter of arrest of an accused is mentioned in the case diary.

In the circumstances, the Commission is inclined to think that the claim made by the officers to justify the arrest of the applicant in their 'Explanation' (supra) was not only false but also misleading. It was on the basis of such misleading explanation that they managed to pre-empt initiation of departmental proceeding. The explanation being not only unsatisfactory but also misleading, the Commission is of the view that regular departmental proceeding should be initiated against both S.I. Gauri Kumari and S.I. R.P. Paswan.

The Commission is conscious of the fact that the power to arrest a person accused of committing a cognizable offence rests with the SHO of the police station/I.O. of the case and therefore technically the applicant being accused in a case under sections 323, 341, 385, 379/34 IPC could be taken into custody but it cannot be denied that the power of arrest has to be exercised judiciously keeping in view the allegations and the attending facts and circumstances. The allegations

and the attending facts and circumstances in the instant case hardly justified the arrest of the applicant but this apart, the officials clearly acted in haste in making the arrest. It was not a case which warranted custodial interrogation or there was fear of tampering of evidence or the applicant fleeing away. To cap it all, power of arrest notwithstanding, arrests are normally made after obtaining orders from superior officers. A bald claim to that effect was indeed made, which has been rejected being an afterthought and an attempt to mislead superior officers and this Commission.

In the facts and circumstances, the Commission would direct Sr.S.P. Patna to initiate department proceeding against S.I. Gauri Kumari – the then SHO and S.I. R.P. Paswan of R.K. Nagar P.S. as per the findings of the DIG Central Range, Patna contained in his report/letter no.828 dated 28.04.2011 and take the matter to its logical end.

Compliance report be submitted within six weeks.

Copy of this order be sent to (i) Sr.S.P. Patna, (ii) DIG Central Range Patna, (iii) S.I. Gauri Kumari – presently posted in S.K. Puri P.S. Patna, (iv) S.I. R.P. Paswan, R.K. Nagar P.S. Patna and (v) applicant.

Justice S.N. Jha
Chairperson

Justice Rajendra Prasad
Member

Date: 12.06.2012