

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

File No **BHRC/COMP.** 477/12

Case of **UDAY KUMAR @ MRITUNJAY KUMAR**

This matter was heard on 5.10.2012 in presence of applicant Uday Kumar @ Mritunjay Kumar and S.I.s Vijay Kumar Singh, Dharmendra Kumar and Kumar Saurabh – to whom notice issued in terms of section 16 of the Protection of Human Rights Act – who appeared with Advocate Vikas Ratan Bharti. DIG Shahabad Range Sri Ajitabh Kumar was also present.

The complaint of the applicant is about his arrest on 24.7.2011 at – as per the police record – 9:10 PM and the events following.

Briefly, as per police version, on 15.7.2011 a tractor was looted by some miscreants for which Chandi P.S. Case No.53/11 under section 392 IPC was registered against unknown. On 24.7.2011 the Incharge of DIV team S.I. Dharmendra Kumar informed SHO Chandi P.S. S.I. Vijay Kumar Singh that miscreants had assembled in the orchard near Akhagaon bandh and were planning to loot another tractor. The police party led by SHO Vijay Kumar Singh went to the spot and apprehended five persons including the applicant. Two others however managed to escape. Fire arms etc. were allegedly recovered from them. From the applicant, it is said, two cell phones were recovered. On the basis of the recoveries – on the statement of SHO Vijay Kumar Singh – Chandi P.S. Case No.56/11 under sections 399/402 IPC and sections 25(1B)/26/35 Arms Act was registered. The applicant was later found to be involved in Chandi P.S. Case No.53/11 as well.

Pleading innocence and false implication the applicant has given his account of the episode. Among other things he has questioned the time and place of arrest. The Commission does not want to go into his defence. Charge sheets have been submitted in both the cases and they are sub judice in court. As a matter of fact, the applicant has also filed complaint case with respect to the incident. The veracity of one or the other version has to be considered by the courts concerned and not by this Commission. As indicated in the earlier orders the Commission proposes to consider issues relating to belated production before the Magistrate for the purpose of remand in Chandi P.S. Case No.56/11 and belated arrest and remand in Chandi P.S. Case No.53/11.

FIR in Chandi P.S. Case No.56/11 is an admission of the fact that the applicant was arrested on 24.7.2011 at 9:10 P.M. Admittedly, he was produced before the Magistrate (CJM Ara) in the evening of 26.7.2011. Section 76 of the

Code of Criminal Procedure contains a mandate to the effect that the police officer making arrest shall without unnecessary delay bring the person arrested before the Court before which he is required by law to produce such person. By reason of the proviso, "the delay shall in no case extend twenty four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court". As a matter of fact, there is a constitutional guarantee to this effect under clause (2) of Article 22 of the Constitution of India which lays down:-

"Every person who is arrested and detained in custody shall be produced before the nearest magistrate within the period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate".

The explanation of S.I. Vijay Kumar Singh is that the applicant was taken along to different places in Kaimur district for apprehending the escaped accused and recovering the stolen tractor in connection with Chandi P.S. no.53/11. It is said that the police party returned to Chandi police station on 26.7.2011 and soon thereafter the applicant was produced before the Magistrate for remand.

Both section 76 Cr.P.C. and Article 22(2) of the Constitution of India allow only so much of margin of time as is necessary for journey from the place of arrest to the court of the magistrate. It is not clear as to how the applicant would have facilitated the arrest of the so called escaped accused or recovery of the stolen tractor. In any view, it does not fit in the scheme of things envisaged in either section 76 of the Cr.P.C. or Article 22(2) of the Constitution of India. Article 22(2) proviso contains a clear injunction against detention beyond twenty-four hours. In the instant case, the applicant was admittedly kept in detention for almost twenty-four hours more, impinging on his fundamental right to personal liberty.

It may not be out of place to mention that owner of the garage (from where tractor parts were recovered) namely, Chandeshwar Singh was sent to Ara from Ramgarh P.S. (district Kaimur) soon after his arrest on 26.7.2011, separately, for his production before CJM Ara.

While perusing the record it transpired that in the arrest memo dated 24.7.2011 (at 9:10 PM) the medical status of the arrestees including the assailants was mentioned as good (swastha stithi). In the remand application on 26.7.2011, however, they were said to have been caused – as per the remand application – "in course of arrest (dhar pakar mein inhein chotein aayi hain)". As a matter of fact, the remand application also stated that for the injuries they had

been treated. The record shows they were treated at Primary Health Centre, Koilwar. As per the injury report, the applicant had four injuries, two of which were simple. As regards the other two, the doctor reserved opinion.

If the arrestees were in good physical condition at the time of arrest – as per the arrest memo, it is difficult to appreciate as to how they came to have injuries in course of 'dhar pakar', at the time of arrest. It is clear they were subjected to assault after their arrest.

It is the specific case of the applicant that after arrest at a place called Telaria (zero mile) – he was taken to the police station and beaten there. The existence of injuries on the person of the applicant – considered conjointly in the light of the arrest memo and the remand application – not only belies the police claim that they were taken to different locations in Kaimur district to facilitate arrest of the accused and recovery of the stolen tractor, but also shows that the police resorted to extra-legal methods amounting to violation of his human rights.

The Commission is satisfied that the detention of the applicant beyond twenty-four hours was in violation of his constitutional rights. The Commission is also of the opinion that the applicant was subjected to physical assault at the hands of the police prior to his production before the Magistrate and his human rights were violated.

Another violation which the Commission would like to point out relates to belated remand of the applicant in Chandi P.S. Case No.53/11. It is true that the case was registered against unknown but it is clear that the involvement of the applicant came to light – as per the alleged confessional statement of Shahabuddin @ Golden – on 24.7.2011 itself. The police was in know of the fact that the applicant was allegedly involved in Chandi P.S. Case No.53/11 as well on the date of his arrest itself but application seeking remand was filed in the court of CJM only on 27.9.2011 and remand order was passed on 5.11.2011. The Commission is of the view that where a person is found involved in more than one case he should be formally arrested and his remand sought in all the cases at the same time or at the earliest opportunity after his involvement in the other crime justifying remand in that case comes to light. Unfortunately, this does not happen. More often than not, the police takes steps to secure remand of the person in the other case(s) at a later stage with the mala fide intention to prolong one's incarceration and deny him his legal rights such as the benefit of the mandatory bail under section 167 Cr.P.C.

The Commission is of the view that for violation of his human rights the applicant is entitled to monetary compensation which in the facts and circumstances is quantified at rupees forty thousand. The Commission is also of

the view that the amount may be recovered from the salary of the erring officials. In other words, the money should be paid by the state at the first instance and recovered from the erring officials later. The Commission is further of the view that for acts of omissions and commissions disciplinary action should be taken against the erring officials.

As regards the role of S.I.s Vijay Kumar Singh, Dharmendra Kumar and Kumar Saurabh, the plea of S.I. Dharmendra Kumar is that he handed over custody of the applicant to S.I. Vijay Kumar Singh and played no further role. The plea of S.I. Kumar Saurabh is that as a subordinate he was bound to obey the command of his superior. According to the applicant he was one of the persons who had assaulted him. Physical assault cannot be said to be in discharge of duty and therefore he cannot be let off on that ground. The Commission is thus of the view that S.I. Kumar Saurabh should share the burden of monetary compensation with S.I. Vijay Kumar Singh half-and-half.

As regards disciplinary proceeding the Commission is of the view that action need be taken against S.I. Vijay Kumar Singh being the SHO and the Investigating Officer of the case for any act of omission or commission resulting in belated production and remand in the cases.

Having thus recorded its finding the Commission would direct S.P. Bhojpur to comply with the order in the matter of payment of compensation, recovery thereof from the salary of the officials concerned and initiation of disciplinary proceedings. He should submit compliance report in the first week of January 2013.

Copy of this order may be sent to (i) S.P. Bhojpur (ii) S.I. Vijay Kumar Singh (iii) S.I. Dharmendra Kumar (iv) S.I. Kumar Saurabh, and (v) applicant.

Copy may also be sent to DGP Bihar and DIG Shahabad range, Dehri-on-Sone.

Date: 16.10.2012

Justice S.N. Jha
Chairperson