

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

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

Case of **YUGAL MOCHI**

This is the third case coming to the notice of this Commission where the person despite his acquittal in the case was re-arrested in the same very case and kept in jail as an under trial prisoner – in the instant case, for as long as 15 years.

The person concerned in the present case is Yugal Mochi son of Arjun Mochi resident of village Banauli within Paliganj P.S. of Patna District. He was accused in Paliganj P.S. Case No.96/90 relating to murder of a co-villager. After submission of the charge sheet, trial – registered as Sessions Trial No.470/91 – was held in which he was acquitted of the charge on 10.07.2003 by the Addl. Sessions Judge (Fast Track Court – I) Patna. In the meantime, on the basis of 'supplementary report', another Sessions Trial bearing ST No.606/93 had been registered against the applicant in which he was granted bail 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 27.05.2009 even though he had been acquitted in the case earlier on 10.07.2003. After his second arrest he remained in jail until 30.08.2010 when he was finally released pursuant to "discharge" order passed by Addl. Sessions Judge Danapur (to whom the case file had been transferred during the intervening period after establishment of the Sessions Court at Danapur).

In its preliminary 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 should be re-arrested and made to remain in jail as an under trial for another spell of fifteen months". Before proceeding further, the Commission sought factual report from District & Sessions Judge, Patna. The report of District & Sessions Judge narrated the sequence of events but did not advert to the fact that the applicant stood acquitted in the case on 10.07.2003.

In its order dated 24.11.2011 the Commission noticed that the facts mentioned in the complaint are not materially at variance with the facts stated in the complaint and sequence of events narrated in the report. The Commission observed that there could be more than one trial against different accused in the same case and if the applicant was shown as absconder in the charge sheet, the trial could be split up and separate trial could be held with respect to him on his arrest. The fact however remained that the applicant stood acquitted in the case

and therefore there was no question of his second arrest after acquittal in the same case.

The Commission also regretted the manner in which the applicant was sent to judicial custody by the magistrate. The Commission rejected the plea that the applicant did not inform the court about his acquittal. Observing that no person of even below average intelligence would refrain from divulging this fact the Commission held that either the applicant was not produced at all before the magistrate and remand order was passed in absentia, in routine, or the magistrate concerned did not pay heed to his remonstrations. In either situation, it was bad and unworthy of the magistrate. The Commission observed, "considering the level and manner in 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"

In its order dated 24.11.2011 the Commission further observed that:-

"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."

Having observed thus, notice was issued to the Principal Secretary, Department of Home as to why suitable compensation be not awarded to the applicant. The Department of Home vide its letter no.17288 dated 14.12.2011 has informed the Commission that the state government will act upon the decision/direction made by the Commission. It is clear that the government does not want to contest the matter.

The Commission is satisfied that the illegal detention of the applicant between 27.05.2009 and 30.08.2010 which was in violation of the mandate of Article 21 of the Constitution also amounted to gross violation of human rights for which he is entitled to be monetarily compensated – even though monetary compensation may be a poor solace for deprivation of his right to liberty. In the facts and circumstances, the Commission would quantify the amount of

compensation at rupees two lakh and direct the state government to pay the amount to the applicant.

Compliance report be submitted within six weeks.

Copy of this order may be sent to Principal Secretary, Department of Home for compliance.

Copy may also be sent to the applicant for information.

Date:14.01.2012

Justice S.N. Jha
Chairperson