

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

File No **BHRC/COMP.** 1736/12

Case of **Bhupendra Rai @ Bhupendra Prasad**

Applicant Bhupendra Rai @ Bhupendra Prasad of village Mukundpur within Patori P.S. of Samastipur district has approached this Commission complaining that he is sought to be prosecuted under section 3(1)(x) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act 1989 (in short SC/ST Act) in Patori P.S. Case No.200/11 at the instance of Sri Arvind Pandey IG, CID without any material or evidence against him.

The case of the applicant is that there was family dispute between one Arjun Chaudhary, his wife Hekaiti Devi and son Sunil Kumar of Imansarai. On being jointly nominated as panch by them, he along with the other panches mediated and resolved the dispute on 7.10.2011 at 9 AM. However, the father and son quarrelled again in the evening and in the next morning i.e. 8.10.2011 Sunil Kumar was found dead. As per the applicant, he had committed suicide. On the instigation of his enemies, however, Hekaiti Devi filed a case viz. Patori P.S. Case No.200/11 under section 302 IPC against him. The case was found to be true under section 306/34 IPC by S.P. Samastipur as per Report-2. DIG Darbhanga Range however held that the offence under section 309 IPC, and not 306 IPC, was made out and he accordingly directed that final report be submitted in this case. At this stage, the CID took over the investigation.

The further case of the applicant is that he was summoned by IG CID Sri Arvind Pandey on 20.4.2012 and on his direction, his statement was recorded. On 24.4.2012 he was called again. As per the applicant, Sri Pandey told him to pay some money to the victim family and settle the matter. The applicant refused saying that he had merely mediated a dispute and committed no wrong. Sri Pandey then told him that there was no evidence against him but he would direct submission of charge sheet under section 3(1)(x) SC/ST Act so that the victim family gets compensation as per the Act because in the case of suicide, no compensation is payable. Applicant filed the instant complaint on the same day i.e. 24.4.2012.

Having regard to the fact that the complaint was directed against an IG rank officer, the Commission called for report from the DGP. On behalf of DGP

DIG (Human Rights) brought on record the report of ADG CID dated 21.12.2012, the relevant part of which runs as follows:-

“यह कांड हत्या/आत्महत्या के लिये उत्प्रेरण का प्रतीत होता है जिसके लिये पिता अर्जुन चौधरी दोषी है। घटना के पश्चात मृतक के पिता अर्जुन चौधरी का फरार हो जाना तथा यहां तक कि पुत्र के दाहदृसंस्कार एवं श्राद्ध-कर्म में शामिल नहीं होना उसके विरुद्ध आरोपण को पुष्टी करता है। उन्होंने यह भी अंकित किया है कि मृत्यु समीक्षा प्रतिवेदन में मृतक के शरीर पर मीपीट का कोई जख्म नहीं पाया गया है। सिर्फ गर्दन पर **Ligature mark** पाया गया है। अतः वादी एवं अभियोजन के कुछ गवाह (जो वादी के ही परिवार से जुड़े हैं) का यह बयान कि भूपेंद्र राय द्वारा मृतक को लाठी से मार-पीट किया गया सत्य प्रतीत नहीं होता है। स्वतंत्र साक्षियों ने भी मृतक कसे मारपीट किए जाने का समर्थन नहीं किया है तथा शांत वतावरण में पंचायती होने की बात बताई है।

परन्तु इस बात की संभावना से इनकार नहीं किया जा सकता कि भूपेंद्र राय द्वारा मृतक के विरुद्ध पंचायती के दौरान कठोर शब्द का इस्तेमाल किया होगा जिसकी प्रतिक्रिया में मृतक ने आत्महत्या की होगी”

The report being far from satisfactory, the matter was fixed for hearing on 16.5.2013 and heard in presence of the applicant and S.P. (Weaker Section) CID Sri Chaurasia Chandra Shekhar Azad who appeared with the IO of the case. In course of hearing the Commission did not find anything to warrant charge sheet under section 3(1)(x) of the SC/ST Act; in fact, Sri Chaurasia Chandra Shekhar Azad and the IO fairly stated that there was no material in the case diary constituting the offence under section 3(1)(x). In the circumstances, the Commission postponed the hearing for the next day observing that Sri Azad should discuss the matter with IG Sri Arvind Pandey. On the next date Sri Pandey himself appeared along with the IO and the matter was heard. No satisfied with the stand and submissions of Sri Pandey, notice in terms of section 16 of the Protection of Human Rights Act was issued to Sri Pandey to submit his written defence by 7.6.2013 and the matter was fixed for hearing on 14.6.2013. The matter was finally heard on 19.6.2013 in the light of the case diary etc. which were made available for perusal by Sri Pandey and the decision was reserved.

The Commission has carefully perused the record including the diary of Patori P.S. Case No.200/11. The facts emerging from the case diary – so far as – relevant to the applicant’s complaint – may briefly be mentioned as follows.

The DIG’s supervision notes contained in memo no.3137 dated 18.12.2011 holding that the case was true under section 309 IPC and

accordingly directing that final report be submitted in the case, was incorporated in S.P.'s Report-3 and para 55 of the case diary dated 30.12.2011. Final report however was not submitted in view of the 'oral' order of IG (Weaker Section) CID vide para 58 of the case diary dated 7.2.2012. The record reveals that on 23.1.2012 IG (Weaker Section) CID had passed an order taking over investigation by the CID and entrusting the same to S.I. Krishna Kumar Sahni of the SC/ST Cell. S.I. Krishna Kumar Sahni vide para 65 of the case diary dated 12.4.2012 took the view that from the attending circumstances, statements of independent witnesses, inspection of the P.O. and post-mortem/inquest reports it squarely appeared to be a case of suicide. From para 116 of the case diary dated 21.6.2012 however it appears that the case was reviewed (समीक्षा) by IG (Weaker Section) and in course of the review the case was found to be true under section 3(1)(x) of the SC/ST Act against the applicant. Two circumstances which were specifically mentioned in the said paragraph as possible reasons for coming to the said conclusion were that the deceased's father Arjun Chaudhary – who was absconding after the occurrence – had not returned home and, secondly, that the applicant was not 'legally authorised' to mediate the dispute. On 10.7.2012 – vide para 122 of the case diary – direction of IG (Weaker Section) CID was received to file charge sheet under section 3(1)(x) of the SC/ST Act against the applicant and accordingly charge sheet was submitted against S.I. Krishna Kumar Sahni on 26.2.2013 and the investigation was thus closed.

In the above factual background the role of Sri Arvind Pandey IG (Weaker Section) CID has to be examined.

It may be recalled that as up to 12.4.2012 when S.I. Krishna Kumar Sahni summed up the facts in para 65 of the case diary, the death of Sunil Kumar described as a case of suicide. DIG Darbhanga Range had taken the view and S.I. Krishna Kumar Sahni of the SC/ST Cell of the CID also took a similar view. All of a sudden, the wind started blowing in a different direction. There was a so called समीक्षा (review) by IG (Weaker Section) and the case was held to be true under section 3(1)(x) of the SC/ST Act on 21.6.2012. It is relevant to mention here that the Commission had issued notice to the DGP for submitting report in the present proceeding on 13.6.2012. Prior to that date, there was not even whisper of the SC/ST Act being applicable against the applicant. It is relevant to mention that although para 65 of the case

diary refers to review (समीक्षा) by IG (Weaker Section) there are no written notes like supervision notes of IG (Weaker Sections) namely Sri Arvind Pandey.

There is, no doubt, mention of rule 12(4) of the SC/ST Rules in the letter of S.P. (Weaker Sections) dated 27.4.2012 directing the District Welfare Officer, Samastipur to take steps for payment of compensation to the victim family but that apparently was a different context. Indeed, it lends support to the applicant's case that on 24.4.2012 he had been asked by Sri Arvind Pandey to pay some money to the victim family and settle the matter or otherwise charge sheet under SC/ST Act would be submitted against him so that the victim family gets compensation. This prima facie shows that there was a move to somehow pay compensation to the victim family and to implicate the applicant to facilitate such payment.

The Commission is inclined to think that the applicant has become victim of circumstances. Mediating family disputes of petty nature is a common phenomenon in villages, and the only sin which the applicant apparently committed was to agree to mediate the dispute between the father on the one side and son and the mother on the other side. It is not correct to describe such mediation as 'illegal' on a purely legalistic view, and on that ground, hold a person guilty of the offence under section 3(1)(x) of the SC/ST Act.

The Commission in fact is of the view – on perusal of the case diary and the materials on record – that there is not an iota of material to buttress the charge envisaged in section 3(1)(x). The section envisages acts constituting "intentional insult or intimidation with intent to humiliate a member of a scheduled caste or a scheduled tribe in any place within public view". There is nothing in the file to suggest that the applicant intentionally insulted or intimidated the deceased with intention to humiliate him.

The Commission has referred to the relevant part of the report of ADG, CID. As per the report, the only thing said about the applicant is that there was a "possibility" that the applicant "might have" used harsh words (कठोर शब्द) against the deceased in reaction of which he "might have" committed suicide.

It is clear that the conclusion is based on conjectures, surmises and suppositions. A person cannot be booked for trial, much less convicted, on the basis of conjectures, surmises and suppositions. Having said that the

Commission would not like to make further comments, for, Sri Arvind Pandey informed the Commission in course of hearing that on receipt of charge sheet, the Special Judge, SC/ST Act, Samastipur took cognizance against the applicant and the case is now in the stage of trial in Special Case no.228/13. It is elementary that in a police case, the court takes cognizance under section 190(1)(b) Cr.P.C. upon a police report submitted under section 173 Cr.P.C; at that stage, the case diary etc. are not taken into consideration. Be that as it may, the Commission does not intervene in sub judice matters and the applicant may seek remedy in the court concerned.

Coming back to the complaint part, the Commission finds the role of Sri Arvind Pandey to be not fair. The sequence of events viz. sending letter to the District Welfare Officer, Samastipur for payment of compensation under SC/ST Act/Rules to the victim family on 27.4.2012; the so-called review (leh{kk) by him on 21.6.2012 – soon after issuance of notice to the DGP – do not appear to be mere coincidences. The Commission is inclined to think that subsequent actions were actuated by some kind of mala fide because the applicant had approached this Commission. It transpired in course of hearing on 19.6.2013 that a case under section 364 IPC has been recently registered against the applicant with respect to the disappearance of Arjun Chaudhary after over one-and-a-half years. The facts of the present case and the possibility of the case stare at the registration of that case being now instituted for extraneous considerations cannot be ruled out.

Having said and held thus, the Commission would not like to make any kind of recommendation and pursue the matter further.

File stands closed.

Copy of this order may be sent to (i) applicant (ii) DGP Bihar and (iii) ADG, CID, and (iv) Sri Arvind Pandey IG (Weaker Section) CID.

Date: 08.07.2013

Justice S.N. Jha
Chairperson